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भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 4 जुलाई, 2011

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 4th July, 2011

का. आ. 1806.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए परीक्षण तथा अपीलीय पुनरीक्षण न्यायालयों में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित मामलों या किसी राज्य या संघ शासित क्षेत्र जहां उपर्युक्त धारा के उपबन्ध लागू होते हैं, विधि द्वारा स्थापित पुनरीक्षण या अपीलीय न्यायालयों में इन मामलों से उत्पन्न अन्य मामलों का संचालन करने के लिए केंद्रीय अन्वेषण ब्यूरो के श्री दिप नारायण, अभियोजन अधिकारी को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/23/2011-एवीडी-II]

राजीव जैन, अवर सचिव

S.O. 1806.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Dip Narain, Prosecuting Officer of the Central Bureau of Investigation as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment (CBI) in trial courts and appeals, revisions or other matters arising out of these cases in revisional or appellate courts, established by law in any State or Union Territory to which provisions of the aforesaid section apply.

[F. No. 225/23/2011-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 5 जुलाई, 2011

का. आ. 1807.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बाम्बे उच्च न्यायालय, मुंबई में अभियोजन, अपीलें, पुनरीक्षणों या दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा अन्वेषित मामलों से उत्पन्न अन्य मामलों का संचालन करने के लिए श्री मदार महेश गोस्वामी, वकील को केंद्रीय अन्वेषण ब्यूरो का विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/18/2011-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 5th July, 2011

S.O. 1807.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Mandar Mahesh Goswami, Advocate as Special Public Prosecutor of the Delhi Special Police Establishment (Central Bureau of Investigation) in the Bombay High Court at Mumbai for conducting the prosecution appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI).

[F. No. 225/18/2011-AVD-II]

RAJIV JAIN, Under Secy.

कार्यालय, मुख्य आयकर आयुक्त

अधिसूचना सं. 17/9/2011-12

जोधपुर, 30 जून, 2011

का. आ. 1808.—आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10(23ग) के खण्ड (vi) के साथ पठित आयकर नियमावली, 1962 के नियम 2 ग ए द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जोधपुर एतद्वारा "सरावगी चैरिटेबल ट्रस्ट-यूनिट महाराजा गंगासिंह डेन्टल कॉलेज-प्रधान कार्यालय 147-जी-ब्लॉक, गंगानगर (राज.)" को उक्त धारा के प्रयोजनार्थ निर्धारण वर्ष 2010-11 से आगे तक निम्नलिखित शर्तों के अधीन अनुमोदित करते हैं :-

1. कर निर्धारिती उसकी आय का प्रयोग अथवा उसकी आय का प्रयोग करने के लिए उसका संचयन पूर्णतः तथा अनन्यतः उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई। कर निर्धारिती न्यास द्वारा एक प्रतिबद्धता (अंडर-टेकिंग) की गयी है कि न्यास का कार्य केवल शिक्षा प्रसार ही होगा व इसके अलावा न्यास कोई कार्य नहीं करेगा। न्यास को यह सुनिश्चित करना है कि दी गई अन्डरटेकिंग का उल्लंघन न हो।

2. कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जेवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा।

3. यह आदेश किसी ऐसी आय के संबंध में लागू नहीं होगा, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों।

4. कर निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा।

5. विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसंपत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी और उसका कोई भी भाग संस्थान के किसी सदस्य को नहीं दिया जाएगा।

6. आयकर अधिनियम की धारा 10(23ग) के साथ पठित 115खखग में परन्तुक 15 की शर्तों में अनाम दानों के सम्बन्ध में यह अनुमोदन लागू नहीं होगा।

7. यह अधिसूचना तब तक जारी रहेगी जब तक इसे वापस न लिया जाए।

[संदर्भ सं.मु.आ.आ./आ.अ.(तक)/जोध/2011-12/1112]

दिलीप शिवपुरी, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX

Notification No. 17/9/2011-12

Jodhpur, the 30th June, 2011

S.O. 1808.—In exercise of the powers conferred by clause (vi) of Section 10(23C) of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income Tax Rules, 1962, I, the Chief Commissioner of Income Tax, Jodhpur hereby approve "Sarawagi Charitable Trust Unit-Maharaja Ganga Singh Dental College-H.O. 147 G. Block Sriganga Nagar (Rajasthan)" for the purpose of the said section for the assessment year 2010-11 onwards, subject to the following conditions :-

1. The assessee will apply its income, or accumulate for application wholly and exclusively to educational purpose only. The assessee trust shall have to adhere to its undertaking that the activities of the trust shall be confined only to educational purpose. The trust and institution shall do no

other activity except education.

2. The assessee will not invest or deposit its funds (other than voluntary contribution received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 ;
3. This order will not apply in relation to any income being profits and gain of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business ;
4. The assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of Income-tax Act, 1961 ;
5. That in the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives and no part of the same will go to any of the members of the Institution.
6. The approval will not apply in relation to anonymous donations in terms of the fifteenth proviso to section 10(23C) r.w.s. 115 BBC of the Act.
7. This notification will remain in force until it is withdrawn.

[Ref. No. CCIT/ITO(Tech.)/Ju/2011-12/1112]

DILEEP SHIVPURI, Chief Commissioner of Income Tax

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 जुलाई, 2011

का. आ. 1809.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप खण्ड (1), खण्ड 5, खण्ड 6, खण्ड 7 और खण्ड 8 के उप खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से, श्री दिलशेर सिंह कल्हा, भारतीय प्रशासनिक सेवा (पंजाब:77) (जन्म तिथि : 13-10-1953), को पदभार ग्रहण करने की तिथि से दिनांक 31-10-2013 तक अर्थात् अधिवर्षिता की आयु प्राप्त करने तक अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एण्ड सिंध बैंक अध्यक्ष और प्रबंध निदेशक के रूप में नियुक्त करती है।

[फा. सं. 9/8/2009-बीओ-1]

समीर कुमार सिन्हा, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st July, 2011

S.O. 1809.—In exercise of the powers conferred by clause (a) of sub-section (3) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3, clause 5, clause 6, clause 7 and sub-clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Dilsher Singh Kalha, IAS (PB:77) (DoB: 13-10-1953) as the Chairman and Managing Director, Punjab & Sind Bank from the date of taking over charge to 31-10-2013, i.e. the date of his attaining the age of superannuation or untill further orders, whichever is earlier.

[F.No. 9/8/2009-BO-I]

SAMIR K. SINHA, Director

नई दिल्ली, 1 जुलाई, 2011

का. आ. 1810.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उपधारा (4) के साथ पठित उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एच आर खान (जन्म तिथि: 29-07-1954), कार्यकारी निदेशक, भारतीय रिजर्व बैंक को उनके पदभार ग्रहण करने की तिथि से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के उप गवर्नर के रूप में नियुक्त करती है।

[फा. सं. 1/1/2011-बीओ-1]

समीर कुमार सिन्हा, निदेशक

New Delhi, the 1st July, 2011

S.O. 1810.—In exercise of the powers conferred by clause (a) of sub-section (1) read with sub-section (4) of Section 8 of The Reserve Bank of India Act, 1934, the Central Government hereby appoints Shri H. R. Khan (Dob: 29-07-1954), Executive Director, Reserve Bank of India as Deputy Governor, Reserve Bank of India for a period of three years from the date of his taking over the charge of the post or until further orders, whichever is earlier.

[F.No. 1/1/2011-BO-I]

SAMIR K. SINHA, Director

(राजस्व विभाग)

नई दिल्ली, 7 जुलाई, 2011

का. आ. 1811.—केन्द्रीय सरकार, धन-शोधन निवारण अधिनियम, 2002 (2003 का 15) की धारा 46 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री आशीष चंद्र सिंह,

उप विधायी सलाहकार, प्रवर्तन निदेशालय को अधिनियम की धारा 43 की उपधारा (1) के अधीन स्थापित विशेष न्यायालय में प्रवर्तन निदेशालय की ओर से धन-शोधन निवारण अधिनियम, 2002 के अधीन उद्भूत होने वाले किसी वाद या वादों के वर्ग या समूह को संचालित करने के लिए विशेष लोक अभियोजक नियुक्त करती है।

[अधिसूचना सं. 8/2011/फा.सं.पी-12011/2/2010-एसओ(ईएस सेल)]

एस. आर. मीना, अवर सचिव

(Department of Revenue)

New Delhi, the 7th July, 2011

S.O. 1811.—In exercise of the powers conferred by sub-section (1) of section 46 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby appoints Shri Ashish Chandra Singh, Deputy Legal Adviser, Directorate of Enforcement, as Special Public Prosecutor for conducting any case or class or group of cases, arising under Prevention of Money-laundering Act, 2002, on behalf of Enforcement Directorate in Special Courts established under sub-section (1) of section 43 of the Act.

[Notification No. 8/2011/F. No. P-12011/2/2010-SO(ES Cell)]

S. R. MEENA, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

[आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी (आयुष) विभाग]

नई दिल्ली, 4 जुलाई, 2011

का. आ. 1812.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में स्वास्थ्य और परिवार कल्याण मंत्रालय के आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी (आयुष) विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. भारतीय चिकित्सा भेषजसंहिता प्रयोगशाला (पीएलआईएम), गाजियाबाद,
2. होम्योपैथिक भेषजसंहिता प्रयोगशाला (एचपीएल), गाजियाबाद,
3. भारतीय चिकित्सा केंद्रीय परिषद (सीसीआईएम), नई दिल्ली,
4. आयुर्वेद क्षेत्रीय अनुसंधान संस्थान, गंगटोक,
5. आयुर्वेद क्षेत्रीय अनुसंधान संस्थान, मंडी।

[सं. ई.-11018(2)/2/2003-भा.चि.प.(रा.भा.)]

एस. श्रीनिवास, उप सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

[Department of Aurveda, Yoga & Naturopathy, Sidha, Unani and Homeopathy (AYUSH)]

New Delhi, the 4th July, 2011

S.O. 1812.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following Offices under the administrative control of the Department of AYUSH, Ministry of Health & Family Welfare, where more than 80% staff have acquired the working knowledge of Hindi :

1. Pharmacopoeia Laboratory of Indian Medicine (PLIM), Ghaziabad.
2. Homoeopathic Pharmacopeia Laboratory (HPL), Ghaziabad.
3. Central Council of Indian Medicine (CCIM), New Delhi.
4. Ayurveda Regional Research Institute, Gangtok.
5. Ayurveda Regional Research Institute, Mandi.

[No. E-11018(2)/2/2003-I.S.M.(O.L.)]

S. SRINIVAS, Dy. Secy.

विद्युत मंत्रालय

नई दिल्ली, 1 जुलाई, 2011

का. आ. 1813.—सार्वजनिक स्थल (अनधिकृत अधिभागियों की बेदखली) अधिनियम, 1971 (1971 का 40), की धारा 3 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा, विद्युत मंत्रालय संख्या का. आ. 128, दिनांक 17 नवंबर, 2000 में भारत सरकार की अधिसूचना में निम्नलिखित अगला संशोधन करती है, नामत :-

उक्त अधिसूचना में तालिका में क्रम संख्या 2 तथा उससे संबंधित प्रविष्टियों को निम्नलिखित से प्रतिस्थापित किया जाएगा, नामत :-

(1)	(2)
"2. श्री एस. के. मूर्थी, प्रबंधक (मानव संसाधन), नेशनल थर्मल पावर कारपोरेशन (एनटीपीसी लिमिटेड), रिहंद सुपर थर्मल पावर प्रोजेक्ट, डाकघर-रिहंद नगर-231223, जिला-सोनभद्र (उत्तर प्रदेश)	नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लिमिटेड) से संबंधित, अथवा इसके द्वारा पट्टे पर लिए गए तथा इसकी रिहंद सुपर थर्मल पावर परियोजना, डाकघर-रिहंद नगर- 231223, जिला- सोनभद्र (उत्तर प्रदेश) के प्रशासनिक नियंत्रण के सभी परिसर"।

[फा. सं. 8/6/1992-थर्मल-I]

आई. सी. पी. केशरी, संयुक्त सचिव

टिप्पणी:- प्रमुख अधिसूचना भारत के राजपत्र में का. आ. संख्या 128, दिनांक 16 नवंबर, 2000 के द्वारा प्रकाशित की गई थी तथा विगत संशोधन अधिसूचना संख्या का. आ. 2261, दिनांक 7 अगस्त, 2009 के द्वारा किया गया था।

MINISTRY OF POWER

New Delhi, the 1st July, 2011

S.O. 1813—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Power number S.O. 128, dated the 17th November, 2000, namely:—

In the said notification, in the Table, for serial number 2 and the entries relating thereto, the following shall be substituted, namely:—

(1)	(2)
“2. Shri S.K. Moorthy, All premises belonging to, Manager (Human Resources), or taken on lease by National Thermal Power Corporation (NTPC Limited), Corporation Limited Rihand Super Thermal Power (NTPC Limited) and under Project, P.O. Rihand Nagar- the administrative control 231223, Distt. Sonebhadra of its Rihand Super Thermal (U.P.) Power Project, P.O. Rihand Nagar- 231223, Distt. Sonebhadra (U.P.)”	

[F.No.8/6/1992-TH.I]

C.P. KESHARI, Jt. Secy.

Note: The Principal notification was published in the Gazette of India vide number S.O. 128, dated the 16th November, 2000 and last amended vide notification number S.O. 2261, dated the 7th August, 2009.

नई दिल्ली, 1 जुलाई, 2011

का. आ. 1814.—सार्वजनिक स्थल (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40), की धारा 3 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा, विद्युत मंत्रालय संख्या का. आ. 1590, दिनांक 8 जुलाई, 1993 में भारत सरकार की अधिसूचना में निम्नलिखित अगला संशोधन करती है, नामतः—

उक्त अधिसूचना में तालिका में क्रम संख्या 3 तथा उससे संबंधित प्रविष्टियों को निम्नलिखित से प्रतिस्थापित किया जाएगा, नामतः—

(1) (2)

“3. श्री सरोज कुमार, उप प्रबंधक नेशनल थर्मल पावर कारपोरेशन (मानव संसाधन), तालचर सुपर लिमिटेड (एनटीपीसी लिमिटेड) थर्मल पावर परियोजना, डाकघर- से संबंधित, अथवा इसके द्वारा कनिहा, जिला-अंगूल, उड़ीसा। पट्टे पर लिए गए तथा इसकी तालचर सुपर थर्मल पावर परियोजना, डाकघर-कनिहा, जिला अंगूल, पिन- 759101, उड़ीसा के प्रशासनिक नियंत्रण के सभी परिसर”।

[फा. सं. 8/6/1992-थर्मल-I]

आई. सी. पी. केशरी, संयुक्त सचिव

टिप्पणी:- प्रमुख अधिसूचना भारत के राजपत्र में का. आ. संख्या 1590, दिनांक 8 जुलाई, 1993 के द्वारा प्रकाशित की गई थी तथा विगत संशोधन अधिसूचना संख्या का. आ. 1865, दिनांक 15 जुलाई, 2010 के द्वारा किया गया था।

New Delhi, the 1st July, 2011

S.O. 1814.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following further amendments in the Notification of the Government of India in the Ministry of Power number S.O. 1590, dated the 8th July, 1993, namely:—

In the said notification, in the Table, for serial number 3 and the entries relating thereto, the following shall be substituted, namely:—

(1)	(2)
“3. Shri Saroj Kumar, Deputy Manager (Human Resources), or taken on lease by Talcher Super Thermal Power Project, P.O. Kaniha, District- Angul, Orissa.	All premises belonging to, National Thermal Power Corporation Limited (NTPC Limited) and under the administrative control of its Talcher Super Thermal Power Project, at P.O. Kaniha District Angul, Pin-759101, Orissa.

[F.No.8/6/1992-TH.I]

C.P. KESHARI, Jt. Secy.

Note : The Principal notification was published in the Gazette of India vide number S.O. 1590, dated the 8th July, 1993 and last amended vide notification number S.O. 1865, dated the 15th July, 2010.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 17 जून, 2011

का. आ. 1815.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
आई एस 12463:1988 की संशोधन संख्या 1	1, मई, 2011	01-07-2011

इस भारतीय संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: ईटी 3/टी-17]

तिथि : 17-6-2011

आर.के. त्रेहान, वैज्ञ. ई एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 17th June, 2011

S. O. 1815.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that Amendment to the Indian Standards, Particulars of which are given in the Schedule hereto annexed has been issued :—

SCHEDULE

No. & Year of the Indian Standards	No. & Year of the Amendment	Date from which the Amendment shall have effect
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(1)	(2)	(3)
Amendment No. 1 to IS 12463:1988 Inhibited Mineral Insulating Oils	01, May, 2011	01-07-2011

Copy of these amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: ET 03/T-17]

R. K. TREHAN, Scientist E & Head (Electrical Engg.)

Date : 17-06-2011

नई दिल्ली, 30 जून, 2011

का. आ. 1816.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
1 आई एस 3024:2006 दिशात्मक कण विद्युत इस्पात की चद्दर एवं पत्री (दूसरा पुनरीक्षण)	संशोधन संख्या 2 जून 2011	29 जून, 2011

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एमटीडी 4/T-69]

तिथि : 30-6-2011

पी. धोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 30th June, 2011

S. O. 1816.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Title of the Standard (s)	No. & Year of the Amendment	Date from which the Amendment shall have effect
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(1)	(2)	(3)	(4)
1	IS 3024:2006 Grain oriented electrical steel sheet and strip (Second revision)	Amendment No. 2 June, 2011	29-06-2011

Copies of these amendment are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: MTD 4/T-69]

P. GHOSH, Sc. 'F' & Head (Met Engg)

नई दिल्ली, 5 जुलाई, 2011

का. आ. 1817.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये है :—

अनुसूची

क्रम संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
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(1)	(2)	(3)	(4)
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1	आई एस 4060:1994 स्वचल वाहन-विद्युत चमक द्वारा दिशा सूचक-विशिष्टि (दूसरा पुनरीक्षण)	संशोधन संख्या 1, जून 2011	30 जून 2011
2	आई एस 9435:2004 दुपहिया एवं तिपहिया वाहनों को छोड़कर सड़क वाहनों के आयाम	संशोधन संख्या 1, जून 2011	30 जून 2011

(1)	(2)	(3)	(4)
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से संबंधित शब्दावली एवं परिभाषाएं (पहला पुनरीक्षण)

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: टीईडी/जी-16]

टी. वी. सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 5th July, 2011

S. O. 1817.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No.	No. Year & title of the Indian Standards	No. and Year of the Amendment	Date from which the Amendment shall have effect
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(1)	(2)	(3)	(4)
1	IS 4060:1994 Automotive vehicles -Flashers for directions indicators -Specification (second revision)	Amendment No.1 June, 2011	30 June 2011
2	IS 9435:2004 Terms and definitions relating to dimensions of road vehicles other than 2 and 3 wheelers (first revision)	Amendment No.1 June 2011	30 June 2011

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: TED/G-16]

T.V. SINGH, Sc. 'F' & Head (Transport Engg)

कोयला मंत्रालय

नई दिल्ली, 1 जुलाई, 2011

का.आ. 1818.—केन्द्रीय सरकार को ऐसा प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है ;

अतः, उक्त अधिसूचना में वर्णित भूमि के क्षेत्र के विस्तृत ब्यौरे अंतर्विष्ट करने वाले रेखांक संख्या सी-1(ई)III/जेजेएन आर/846-1110, तारीख 30 नवम्बर, 2010 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (खोज प्रभाग), केन्द्रीय खान योजना एवं डिजाइन संस्थान, गोंडवाना पैलेस, कार्फे रोड, रांची-834 001 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700 001 के कार्यालय में या जिला कलेक्टर, यवतमाल, के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पूर्वोक्षण करने के अपने आशय की सूचना देती है;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप, या
- (ii) भूमि में या ऐसी भूमि पर कोई अधिकार या भूमि के प्रतिकर के हित के यदि कोई दावा, या
- (iii) खनन पट्टा अर्जन करने के अधीन अधिकारों की पूर्वोक्षण अनुज्ञप्ति प्रभावहीन हो जाने और भूमि संबंधी सभी नक्शे, चार्टों तथा अन्य दस्तावेजों का परिदान, अयस्कों या अन्य खनिजों के नमूनों का भूमि से संग्रहण और उनका सम्यक् विश्लेषण करने के लिए तथा उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट कोई अन्य सुसंगत अभिलेखों या सामग्रियों की तैयारी के लिए प्रतिकर,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर, मुख्य महाप्रबंधक वेस्टर्न कोलफील्ड्स लिमिटेड, वणी नार्थ, क्षेत्र, डाक-वणी, तहसील-वणी, जिला यवतमाल या (महाराष्ट्र) या महाप्रबंधक वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेगा ।

अनुसूची

उकनी डीप एक्सप्लोरेशन ओपनकास्ट ब्लॉक

वणी नार्थ क्षेत्र

जिला यवतमाल (महाराष्ट्र)

(रेखांक संख्या सी.-1(ई)III/जेजेएनआर/846-1110, तारीख 30 नवम्बर, 2010)

भाग-क

क्रम सं.	ग्राम का नाम	पटवारी सकिल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में (लगभग)	टिप्पणी
1.	बोरगांव	33	वणी	यवतमाल	3.11	भाग
2.	जुनाड	33	वणी	यवतमाल	2.03	भाग
3.	पिंपलगांव	33	वणी	यवतमाल	153.40	भाग
4.	उकनी	34	वणी	यवतमाल	103.51	भाग

कुल क्षेत्र : 262.05 हेक्टर (लगभग)

या 647.53 एकड़ (लगभग)

भाग-ख						
क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में (लगभग)	टिप्पणी
1.	उकनी	34	वणी	यवतमाल	67.12	भाग
2.	वेल्लहारा	33	वणी	यवतमाल	26.36	भाग

कुल क्षेत्र : 93.48 हेक्टर (लगभग)

या 230.98 एकड़ (लगभग)

भाग-‘क’	+	भाग-‘ख’	=	कुल क्षेत्रफल
262.05	+	93.48	=	355.53 हेक्टर (लगभग)
		या		
647.53	+	230.98	=	878.51 एकड़ (लगभग)

सीमा वर्णन :

भाग-‘क’

- क-ख : रेखा ग्राम बोरगांव के बिन्दु ‘क’ से आरंभ होती है और ग्राम बोरगांव एवं जुनाड की सम्मिलित ग्राम सीमा से गुजरती हुई बिन्दु ‘ख’ पर मिलती है।
- ख-ग-घ-ङ : रेखा ग्राम बोरगांव और जुनाड की सम्मिलित ग्राम सीमा से गुजरती हुई बिन्दु ‘ग’ पर मिलती है। फिर ग्राम पिंपलगांव और ग्राम जुनाड की सम्मिलित सीमा से गुजरती हुई बिन्दु ‘घ’ से होकर गुजरती है और बिन्दु ङ पर मिलती है।
- ङ-च-छ-ज-झ : रेखा ग्राम पिंपलगांव से होकर गुजरती है और वर्धा नदी के किनारे और बिन्दु ‘च’ पर मिलती है तथा वर्धा नदी के किनारे से आगे बढ़ती है फिर ग्राम पिंपलगांव एवं ग्राम उकनी की सम्मिलित ग्राम सीमा को पार करती है फिर वर्धा नदी के किनारे से गुजरती हुई बिन्दु ‘छ’ से होकर गुजरती है और ग्राम उकनी ग्राम पिंपलगांव की सम्मिलित सीमा बिन्दु ‘झ’ पर मिलती है।
- झ-ञ-ट-क : रेखा ग्राम पिंपलगांव से होकर गुजरती है और बिन्दु ‘ज’ तथा ‘ट’ तक जाती है और आरंभिक बिन्दु ‘क’ पर मिलती है।

सीमा वर्णन :

भाग-‘ख’

- ठ-ड-ढ-ण : रेखा ग्राम वेल्लहारा के बिन्दु ‘ठ’ से आरंभ होती है और बिन्दु ‘ड’ तथा बिन्दु ‘ढ’ से गुजरती हुई ग्राम उकनी तथा ग्राम वेल्लहारा की सम्मिलित सीमा से होकर गुजरती है और बिन्दु ‘ण’ पर मिलती है।
- ण-त-थ-द : रेखा ग्राम उकनी से गुजरती हुई बिन्दु ‘त’ तक जाती है और ग्राम उकनी एवं ग्राम वेल्लहारा की सम्मिलित सीमा पर बिन्दु ‘थ’ पर मिलती है फिर ग्राम उकनी एवं ग्राम वेल्लहारा की सम्मिलित सीमा से गुजरती है और के बिन्दु ‘द’ पर मिलती है।
- द-ध-ठ : रेखा ग्राम वेल्लहारा से गुजरती हुई बिन्दु ‘ध’ तक जाती है और आरंभिक बिन्दु ‘ठ’ पर मिलती है।

[फा. सं. 43015/3/2011-पीआरआईडब्ल्यू-1]

एस. सी. भाटिया, निदेशक

MINISTRY OF COAL

New Delhi, the 1st July, 2011

S.O. 1818.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule annexed hereto ;

And Whereas, the Plan bearing number C-1(E)III/JJNR/846-1110, dated the 30th November, 2010 containing the details of the areas of land described in the said Schedules may be inspected at the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi-834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata-700 001 or at the office of the District Collector, Yavatmal (Maharashtra) ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule ;

Any persons interested in the land described in the said Schedule may—

- (i) Object to the acquisition of the whole or any part of the land, or of any rights in or over such land, or
- (ii) claim an interest in compensation if the land or any rights in or over such land, or
- (iii) seek compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of Section 13 of the said Act.

to the Office of the Chief General Manager, Western Coalfields Limited, Wani North Area, Post Wani, Tahsil Wani, District Yavatmai (Maharashtra) or General Manager, Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

UKNI DEEP EXTENSION OPENCAST BLOCK

WANI NORTH AREA

DISTRICT YAVATMAL (MAHARASHTRA)

(Plan bearing number C-1(E)III/JJNR/846-1110, dated the 30th November, 2010)

"PART-A"

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Area in hectares (approximately)	Remark
1.	Borgaon	33	Wani	Yavatmal	3.11	Part
2.	Junad	33	Wani	Yavatmal	2.03	Part
3.	Pimpalgaon	33	Wani	Yavatmal	153.40	Part
4.	Ukni	34	Wani	Yavatmal	103.51	Part

Total area: 262.15 hectares

(approximately)

or 647.53 acres

(approximately)

"PART-B"

Sl. No.	Name of Village	Patwari Circle Number	Tahsil	District	Area in hectares (approximately)	Remark
1.	Ukni	34	Wani	Yavatmal	67.12	Part
2.	Welhala	33	Wani	Yavatmal	26.36	Part

Total area : 93.48 hectares

(approximately)

or 230.98 acres

(approximately)

"PART-A"

+

"PART-B"

=

TOTAL AREA

262.05

+

93.48

=

355.53 hectares (approximately)

OR

647.53

+

230.98

=

878.51 acres (approximately)

Boundary description :**"PART-A"**

- A-B : Line starts from village Borgaon at Point 'A' and after passing through common boundary of villages Borgaon and Junad and meets at Point 'B'.
- B-C-D-E : Line passes through common boundary of villages Borgaon and Junad upto Point 'C' then proceeds along the common boundary of villages Pimpalgaon and Junad upto Point 'C' then passes through village Junad upto Point 'D' and meets at Point 'E'.
- E-F-G-H-I : Line passes through village Pimpalgaon and meets at Point 'F' on the bank of Wardha River, then passes along the bank of Wardha River then crosses the common boundary of villages Pimpalgaon and Ukni, then proceeds along the bank of Wardha River upto Point 'G' then passes through village Ukni upto Points 'H' and meets at common boundary of villages Ukni and Pimpalgaon at Point 'I'.
- I-J-K-A : Line passes through village Pimpalgaon upto Point 'J' and 'K' and meets finally at starting Point 'A'.

Boundary description :**"PART-B"**

- L-M-N-O : Line starts from village Welhara at Point 'L' and passing through Points 'M', 'N' and meets in common boundary of villages Ukni and Welhala at Point 'O'.
- O-P-Q-R : Line passes through village Ukni upto Point 'P' and meets on the common boundary of villages Ukni and Welhara at Point 'Q', then proceeds along the common boundary of villages Ukni and Welhara and meets at Point 'R'.
- R-S-L : Line passes through village Welhara upto Point 'S' and meets at starting Point 'L'.

[F. No. 43015/3/2011-PRIW-I]

S. C. BHATIA, Director

नई दिल्ली, 1 जुलाई, 2011

का.आ. 1819.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि से कोयला अभिप्राप्त किए जाने की संभावना है ;

और, उक्त अनुसूची में वर्णित भूमि के क्षेत्र के अंतर्गत आने वाले रेखांक संख्या सी-1(ई)III/एचआर/843-1110, तारीख 2 नवम्बर, 2010 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व), कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) या मुख्य महाप्रबंधक (खोज प्रभाग), सेंट्रल माइन प्लानिंग एंड डिजाइन इन्स्टीट्यूट, गोदवाना प्लेस, कांके रोड, रांची या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता के कार्यालय में या जिला कलेक्टर, छिदवाड़ा (मध्य प्रदेश), में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है ;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप, या
- (ii) भूमि में या ऐसी भूमि पर कोई अधिकार या भूमि के प्रतिकर के हित के यदि कोई दावा, या
- (iii) खनन पट्टा अर्जन करने के अधीन अधिकारों की पूर्वक्षण अनुज्ञप्ति प्रभावहीन हो जाने और भूमि संबंधी सभी नक्शे, चाटों तथा अन्य दस्तावेजों का परिदान, अयस्कों या अन्य खनिजों के नमूनों का भूमि से संग्रहण और उनका सम्यक् विश्लेषण करने के लिए तथा उक्त अधिनियम की धारा 13 को उपधारा (7) में निर्दिष्ट कोई अन्य सुसंगत अभिलेखों या सामग्रियों की तैयारी के लिए प्रतिकर,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर, महाप्रबंधक, (भूमि और राजस्व) वेस्टर्न कोलफील्ड्स लिमिटेड, राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, कन्हान क्षेत्र डाकघर—डुंगरिया, तहसील—जुन्नारदेव, जिला—छिदवाड़ा 480 553 (मध्य प्रदेश) को भेजेंगी।

अनुसूची

तानसी एक्सपेन्शन अंडरग्राउंड माईन

कन्हान क्षेत्र

जिला—छिदवाड़ा (मध्य प्रदेश)

[रेखांक संख्या सी-1(ई)III/एचआर/843-1110, तारीख 2 नवम्बर, 2010]

भाग—क

क्रम सं.	ग्राम का नाम	वन का नाम	पटवारी सर्किल संख्या	रेंज का नाम ब्लॉक का नाम और कम्पार्टमेंट संख्या	तहसील	जिला	क्षेत्र (हेक्टर में)	टिप्पणी
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	करंजपानी धुन्धी	-	07	-	जुन्नारदेव	छिदवाड़ा	91.390	पूर्ण
2.	-	संरक्षित वन	-	दमुआ रेंज, रामपुर ब्लॉक, नया 400	जुन्नारदेव	छिदवाड़ा	23.710	भाग
3.	-	संरक्षित वन	-	दमुआ रेंज, रामपुर ब्लॉक, नया 401	जुन्नारदेव	छिदवाड़ा	66.670	भाग
4.	-	संरक्षित वन	-	दमुआ रेंज, रामपुर ब्लॉक, नया 402	जुन्नारदेव	छिदवाड़ा	1.210	भाग

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
5.	-	संरक्षित वन	-	दमुआ रेंज, रामपुर ब्लॉक, नया 410	जुन्नारदेव	छिंदवाड़ा	21.310	भाग

कुल क्षेत्र : 204.290 हेक्टर (लगभग)

या 504.800 एकड़ (लगभग)

सीमा वर्णन :

- क-ख : रेखा बिन्दु 'क' से आरंभ होती है (विद्यमान खान सीमा) तथा खदान की सीमा से गुजरती हुई वनभूमि के कक्ष क्रमांक 401 (नया), 402 (नया), तथा 410 (नया), से गुजरकर पट्टा रियायत अधिनियम के तहत वर्तमान पट्टा सीमा के बिन्दु 'ख' पर मिलती है।
- ख-ग : रेखा पट्टा रियायत अधिनियम के तहत वर्तमान पट्टा सीमा तथा वन क्षेत्र के कक्ष क्रमांक 410 (नया) से गुजरती हुई बिन्दु 'ग' पर मिलती है।
- ग-घ : रेखा पट्टा रियायत अधिनियम के तहत वर्तमान पट्टा सीमा तथा वन क्षेत्र के कक्ष क्रमांक 410 (नया) से गुजरती हुई ग्राम करंजपानी धुन्धी की वर्तमान पट्टा सीमा पर बिन्दु 'घ' पर मिलती है।
- घ-ङ : रेखा बिन्दु 'घ' से पट्टा रियायत अधिनियम के तहत वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'ङ' पर मिलती है।
- ङ-च : रेखा बिन्दु 'ङ' से पट्टा रियायत अधिनियम के तहत वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी संयुक्त सीमा से गुजरती हुई कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा पर बिन्दु 'च' पर मिलती है।
- च-छ : रेखा बिन्दु 'च' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'छ' पर मिलती है।
- छ-ज : रेखा बिन्दु 'छ' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'ज' पर मिलती है।
- ज-झ : रेखा बिन्दु 'ज' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'झ' पर मिलती है।
- झ-ञ : रेखा बिन्दु 'झ' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'ञ' पर मिलती है।
- ञ-ट : रेखा बिन्दु 'ञ' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'ट' पर मिलती है।
- ट-ठ : रेखा बिन्दु 'ट' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा ग्राम करंजपानी धुन्धी की सीमा से गुजरती हुई बिन्दु 'ठ' पर मिलती है।
- ठ-ड : रेखा बिन्दु 'ठ' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा वन कक्ष क्रमांक 400 (नया) से गुजरती हुई बिन्दु 'ड' पर मिलती है।
- ड-ढ : रेखा बिन्दु 'ड' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा वन कक्ष क्रमांक 400 (नया) से गुजरती हुई बिन्दु 'ढ' पर मिलती है।
- ढ-ण : रेखा बिन्दु 'ढ' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा वन कक्ष क्रमांक 400 (नया) से गुजरती हुई बिन्दु 'ण' पर मिलती है।
- ण-त : रेखा बिन्दु 'ण' से कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 के तहत अधिग्रहित भूमि की वर्तमान पट्टा सीमा तथा खदान की सीमा तथा वन कक्ष क्रमांक 400 (नया) एवं 401 (नया) से गुजरती हुई बिन्दु 'त' पर मिलती है।
- त-क : रेखा वर्तमान खदान की सीमा तथा वन कक्ष क्रमांक 401 (नया) से गुजरती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/29/2010-पीआरआईडब्ल्यू-1]

एस. सी. भाटिया, निदेशक

New Delhi, the 1st July, 2011

S.O. 1819.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto ;

And Whether, the Plan bearing number C-1(E)III/HR/843-1110, dated the 2nd November, 2010 containing the area of land described in the said Schedules may be inspected at the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata or at the office of the District Collector, Chhindwara (Madhya Pradesh) ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from land described in the said Schedule ;

Any persons interested in the land described in the said Schedules may—

- (i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land, or
- (ii) claim an interest in compensation if the land or any rights in or over such land, or
- (iii) seek compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of Section 13 of the said Act.

to the General Manager, (Land and Revenue) Western Coalfields Limited, (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) office of the General Manager, Western Coalfields Limited, Kanhan Area, Post Office Dungaria, Tahsil Junnardeo, District Chhindwara-480 553 (Madhya Pradesh) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

EXPANSION OF TANDSI UNDERGROUND MINE KANHAN AREA

DISTRICT CHHINDWARA (MADHYA PRADESH)

(Plan bearing number C-1(E)III/HR/843-1110, dated the 2nd November, 2010)

Sl. No.	Name of the Village	Name of the Forest	Patwari Circle Number	Name of the Range, Name of Block and Compartment number	Tahsil	District	Area (in hectares)	Remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Karanjpani Dhundhi	—	07	—	Junnardeo	Chhindwara	91.390	Full
2.	—	Protected Forest	—	Damua Range, Rampur Block, New 400	Junnardeo	Chhindwara	23.710	Part
3.	—	Protected Forest	—	Damua Range, Rampur Block, New 401	Junnardeo	Chhindwara	66.670	Part
4.	—	Protected Forest	—	Damua Range, Rampur Block, New 402	Junnardeo	Chhindwara	1.210	Part

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
5.	Karanjpani Dhundhi	Protected Forest	—	Damua Range, Rampur Block, New 410	Junnardeo	Chhindwara	21.310	Part

Total area : 204.290 hectares

(approximately)

or 504.800 acres

(approximately)

Boundary description :

- A-B: Line starts from Point 'A' (existing mine boundary) and passes along mine boundary, forest land of compartment No. 401(New), 402 (new) and 410 (New) and meets at point 'B' existing lease boundary under MCR.
- B-C: Line passes along existing lease boundary of MCR and forest land of compartment No. 410 (New) and meets at Point 'C' on existing lease boundary under MCR.
- C-D: Line passes along existing lease boundary of MCR and forest area of compartment No. 410 (New) and meets at Point 'D' on existing lease boundary under MCR and village boundary of Karanjpani Dhundhi.
- D-E: Line passes from Point 'D' and meets at Point 'E' on village boundary of Karanjpani Dhundhi and existing lease boundary of MCR.
- E-F: Line passes from Point 'E' along existing lease boundary of MCR and village boundary of Karanjpani Dhundhi and meets at Point 'F' existing lease boundary of MCR and existing lease boundary of CBA.
- F-G: Line passes from Point 'F' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'G'.
- G-H: Line passes from Point 'G' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'H'.
- H-I: Line passes from Point 'H' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'I'.
- I-J: Line passes from Point 'I' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'J'.
- J-K: Line passes from Point 'J' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'K'.
- K-L: Line passes from Point 'K' along existing lease boundary of CBA and village boundary of Karanjpani Dhundhi and meets at Point 'L'.
- L-M: Line passes from Point 'L' along existing lease boundary of CBA and forest compartment No. 400 (New) and meets at Point 'M'.
- M-N: Line passes from Point 'M' along existing lease boundary of CBA and forest compartment No. 400 (New) and meets at Point 'N'.
- N-O: Line passes from Point 'N' along existing lease boundary of CBA and forest compartment No. 400 (New) and meets at Point 'O'.
- O-P: Line passes from Point 'O' along existing lease boundary of CBA and existing mine boundary and forest compartment No. 400 (New) 401(New) and meets at Point 'P'.
- P-A: Line passes along existing mine boundary and compartment No. 401 (New) and meets at starting Point 'A'.

[F.No. 43015/29/2010-PRIW-I]

S. C. BHATIA, Director

नई दिल्ली, 4 जुलाई, 2011

का.आ. 1820.—केन्द्रीय सरकार को ऐसा प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है ;

अतः, उक्त अधिसूचना अनुसूची में वर्णित क्षेत्र में अंतर्विष्ट ब्यौरे रेखांक संख्या सी-1(ई)III/एफआर/848-1210, तारीख 6 दिसम्बर, 2010 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (खोज प्रभाग), केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना पैलेस, कॉफे रोड, रांची के कार्यालय में या कोयला नियंत्रक, I, कार्डसिल हाउस स्ट्रीट, कोलकाता के कार्यालय में या जिला कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

- संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप, या
- भूमि में या ऐसी भूमि पर कोई अधिकार या भूमि के प्रतिकर के हित के यदि कोई दावा, या
- खनन पट्टा अर्जन करने के अधीन अधिकारों की पूर्वक्षण अनुज्ञप्ति प्रभावहीन हो जाने और भूमि संबंधी सभी नक्शे, चाटों तथा अन्य दस्तावेजों का परिदान, अयस्कों या अन्य खनिजों के नमूनों का भूमि से संग्रहण और उनका सम्यक् विश्लेषण करने के लिए तथा उक्त अधिनियम की धारा 13 की उप-धारा (7) में निर्दिष्ट कोई अन्य सुसंगत अभिलेखों या सामग्रियों की तैयारी के लिए प्रतिकर,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर, महाप्रबंधक वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर क्षेत्र, डाक-जरीपटका, तहसील-नागपुर, जिला-नागपुर-440 014 (महाराष्ट्र) या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेगा।

अनुसूची

आदासा अंडरग्राउंड माईन

नागपुर क्षेत्र

जिला नागपुर (महाराष्ट्र)

[रेखांक संख्या 1(ई)III/एफआर/848-1210, तारीख 6 दिसम्बर, 2010]

भाग-क

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (हेक्टर में)	टिप्पणी
1	येरंडगांव	30	सावनेर	नागपुर	35.50	भाग
2	पटकाखेडी	33	सावनेर	नागपुर	29.50	भाग
3	कोटोडी	30	सावनेर	नागपुर	140.60	भाग

कुल क्षेत्र : 205.60 हेक्टर (लगभग)

या 508.05 एकड़ (लगभग)

सीमा वर्णन :-

- 'क'-'ख' : रेखा ग्राम पटकाखेडी में बिन्दु 'क' से आरंभ होती है फिर ग्राम कोटोडी से होते हुए आगे बढ़ती है और बिन्दु 'ख' पर मिलती है।
- 'ख'-'ग' : रेखा ग्राम कोटोडी से होकर गुजरती है फिर ग्राम येरंडगांव से होते हुए आगे बढ़ती है और बिन्दु 'ग' पर मिलती है।
- 'ग'-'घ' : रेखा ग्राम येरंडगांव से होकर गुजरती है और ग्राम येरंडगांव और ग्राम कोटोडी की सम्मिलित ग्राम सीमा पर बिन्दु 'घ' पर मिलती है।
- 'घ'-'ङ' : रेखा ग्राम कोटोडी से होकर गुजरती है और बिन्दु 'ङ' पर मिलती है।
- 'ङ'-'च' : रेखा ग्राम कोटोडी से होकर गुजरती है फिर ग्राम पटकाखेडी से आगे होते हुए आगे बढ़ती है और बिन्दु 'च' पर मिलती है।
- 'च'-'क' : रेखा ग्राम पटकाखेडी से होकर गुजरती है और आरंभिक बिन्दु 'घ' पर मिलती है।

[फा. सं. 43015/1/2011-बीआरआईडब्ल्यू-1]

एस. सी. भाटिया, निदेशक

New Delhi, the 4th July, 2011

S.O. 1820.— Whereas, it appears to the Central Government that Coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And whereas, the plan bearing number C-1(E)III/FR/848-1210, dated the 6th December, 2010 containing the details of the area described in the said Schedules can be inspected at the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata or at the office of the District Collector, Nagpur (Maharashtra) ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule; .

Any persons interested in the land described in the said Schedules may—

- (i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land, or
- (ii) claim an interest in compensation if the land or any rights in or over such land, or
- (iii) seek compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of section 13 of the said Act.

to the Office of the General Manager, Western Coalfields Limited, Nagpur Area, Post Jaripatka, Tahsil-Nagpur, District Nagpur-440 014 (Maharashtra) or General Manager, Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

ADASA UNDERGROUND MINE

NAGPUR AREA

DISTRICT NAGPUR (MAHARASHTRA)

[Plan bearing number C-1(E)III/FR/848-1210, dated the 6th December, 2010]

S1. No.	Name of Village	Patwari Circle Number	Tahsil	District	Area (in hectares)	Remarks
1.	Yerandgaon	30	Saoner	Nagpur	35.50	Part
2.	Patkakhedi	33	Saoner	Nagpur	29.50	Part
3.	Kotodi	30	Saoner	Nagpur	140.60	Part

Total area: 205.60 hectares
(approximately)
or 508.05 acres
(approximately)

Boundary Description :

- 'A'-'B': Line starts from Point 'A' in village Patkakhedi then proceeds through village Kotodi and meets at Point 'B'.
- 'B'-'C': Line passes through village Kotodi then proceeds through village Yerandgaon and meets at Point 'C'.
- 'C'-'D': Line passes through village Yerandgaon and meets at Point 'D' on common village boundary of villages Yerandgaon and Kotodi.
- 'D'-'E': Line passes through village Kotodi and meets at Point 'E'.
- 'E'-'F': Line passes through village Kotodi then proceeds through village Patkakhedi and meets at Point 'F'.
- 'F'-'A': Line passes through village Patkakhedi and meets at starting Point 'A'.

[F.No.43015/1/2011-PRIW-I]

S. C. BHATIA, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 जून, 2011

का.आ. 1821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्दल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, सं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1561/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/60/2008-आईआर (बी-2)]

रमेश सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th June, 2011

S.O. 1821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1561/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. -2, Chandigarh as shown in the Annexure in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 14-6-2011.

[No. L-12011/60/2008-IR(B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT-II,
CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 1561/2k8

Registered on 09-09-2008

The President Central Bank of India Employees Union (HR),
129 Lal Kurti, Ambala Cantt.- 133 001

.....Applicant

Versus

The Regional Manager, Central Bank of India, Regional
Office 106, Metro Motors Bldg. Railway Road, Ambala Cantt.
(Haryana)

.....Respondent

APPEARANCES

For the Workman : Sh. B.S. Gill, AR of workman

For the Management : Sh.A.K. Batra, Representative
of Management

AWARD

Passed on 1st June, 2011

Central Government vide Notification No. L-12011/60/2008-IR (B-II) Dated 01-09-2008, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the action of management of Central Bank of India in not considering the case of the workman Shri Sarwan Kumar for pension on the basis of option given by the workman within the stipulated time framed by the management is just, fair and legal. What relief the concerned workman is entitled to and from which date?”

The Central Bank of India Employees Union (HR), the claimant in the case has raised an industrial dispute by stating that the service conditions of the concerned workman Sarwan Kumar are governed by the bi-partite settlement applicable to Award staff in the banking industry. He had opted for pension as per Central Bank of India Employees' Regulations, 1995. The management vide letter dated 04-01-1996 had accepted the pension option of the workman. But the particulars in the P.F. Statement issued to workman mentioned 'No' against the option of pension and thus treated him as a non-optee for pension. Management has flouted the pension rules. It has been prayed that a direction be issued to the management to restrain them from flouting the pension rules.

No written statement/reply was filed by the management, of the claim statement. However, an affidavit of Ajit Singh, Regional Manager, Central Bank of India, Regional Office, Ambala Cantt. was filed and it was stated therein that the concerned workman had opted for pension but he had withdrawn that option before 25-01-1996. After receipt of the option letter the management had accepted the same vide letter dated 04-01-1996 addressed to the workman but the same letter contained a noting of Branch Manager regarding withdrawal of pension option and the same had been conveyed and acknowledged by the concerned workman.

After the affidavit of the management witness no evidence was produced by the claimant. On 19-05-2010 the A.R. of the claimant informed the death of the concerned workman. He requested time to substitute the heirs of the deceased but despite notice sent by registered post to claimant no further steps were taken in the matter and none appeared for the claimant after 28-06-2010 and here the matter was taken up for adjudication.

There is no denial on behalf of the claimant of the facts stated by the Regional Manager of respondent bank that the concerned workman had withdrawn his option for pension before 25-01-1996. Obviously, after withdrawing his option he was treated non-optee of pension and the management/respondent was right in doing so as the concerned workman had withdrawn his option for pension. Therefore the action of the management of Bank in not considering the case of the workman Sarwan Kumar for pension on the basis of option given by him is just, fair and legal. Workman is not entitled to any relief. Reference is answered against the workman. Let two copies of award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 14 जून, 2011

का.आ. 1822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, सं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 15/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/72/2009-आईआर (बी-2)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. -2, Chandigarh as shown in the Annexure in the industrial dispute between the management of Punjab & Sindh Bank, and their workmen, received by the Central Government on 14-06-2011.

[No. L-12012/72/2009-IR(B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 15/2K9

Registered on 02-12-2009

Sh. Sudhir Kumar Sharma S/o Sh. Bhim Singh Sharma,
Syndicate Bank CAO 25, Jeewan Prakash Bldg. K.G. Marg,
New Delhi

.....Applicant

Versus

The Deputy General Manager, Syndicate Bank, Regional
Office, 48 Bhadana Bhawan, Neelam Bata Road, Faridabad
.....Respondent

APPEARANCES

For the Workman : Sh. B.S. Sharma, AR of workman
For the Management : Sh. Aman Khera, Manager (HR/
IR) for management bank.

AWARD

Passed on 2nd June, 2011

Central Government vide Notification No. L- 12011/72/2009 IR (B-II) Dated 05-11-2009, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the action of the Deputy General Manager, Syndicate Bank, Faridabad in not paying the allowance and protection of emoluments on being transferred on redeployment from Ballabgarh District Faridabad to Nanglat Branch Distt. Mewat as per 8th bipartite settlement w.e.f. 27-6-2005 till date is just, fair and legal? To what relief the workman is entitled to and from which date?”

Workman raised an industrial dispute stating that he belongs to Non-subordinate Cadre of the respondent bank. On 25-06-2005 he was transferred from Ballabgarh to Nanglat Branch. He joined the transferee branch on 27-06-2005. He was deployed outside the district under the deployment scheme of the bank and as per provisions of VIII Bi-partite Settlement he was entitled to a lump sum amount of Rs. 400 P.M. besides protection of emoluments drawn at the original centre, so long he is not repatriated to the original centre. He was being paid as per aforesaid provisions of the settlement. But on 28-11-2006 the branch of the bank was ordered to recover the same and the status of transfer was change from deployment to general transfer. With effect from 01-01-2007 the management again started to pay the lump sum amount of Rs. 400 P.M. but the amount recovered was not repaid and on 31-05-2008 the management again advised the branch to recover the amount. On 31-12-2008 the management again started paying the lump sum amount w.e.f. 1-06-2007 but on 03-03-2009 the management again advised the branch office to stop payment of the lump sum amount. The claim has been filed by Syndicate Bank Staff Association and it has been prayed that the direction be issued to the management to repatriate the workman to the original centre i.e. Ballabgarh branch and to pay Rs. 1,78,665 as per Annexure XII of the Claim

statement and action be taken against the erring officials for resorting to unfair labour practice in respect of subject matter under the provisions of the Act.

The claim was contested by the respondent/management. It was stated that as per transfer policy norms of the bank the general transfers are effected within the District and if there is only one branch in a district, the transfer may be effected to the close or contiguous district in which there is a branch office. The rotational transfer shall be within the state for the deployment of staff from surplus district to deficit district exempting certain categories of clerical staff as enumerated in the guidelines issued by the bank from time to time. It was further stated that the workman had been transferred within the former undivided Faridabad District and hence it was general transfer and no lump sum amount was admissible to him. He had not been transferred under rotational transfer as claimed by him.

The claimant filed rejoinder to the written statement of the respondent it was disclosed in the rejoinder that the Mewat District was formed on 04-04-2005, the VIII Bi-partite Settlement was signed on 02-06-2005 and the workman was transferred on 25-06-2005 i.e. much after the formation of the Mewat District and signing of VIII Bi-partite settlement. It also appears from the rejoinder that Ballabgarh, where the workman was working before his transfer was in Faridabad District while Nangal Jat, the place to which he was transferred is in Mewat District. It was reiterated that transfer of the workman from Ballabgarh to Nangal Jat is deployment in terms of VIII Bi-partite Settlement and therefore, he is entitled to the lump sum amount of Rs. 400 per month with protection of all his emoluments.

From the pleadings of the parties following issues arise for consideration:—

1. Whether the workman was deployed outside district under the deployment scheme of the bank and is he entitled to lump-sum amount of Rs. 400 P.M. plus protection of emoluments drawn at the original centre?
2. Whether the management is justified in refusing the allowances and emoluments in question to the workman?
3. What relief the workman is entitled to?

The concerned workman filed his affidavit while the management did not choose to cross examine him. It did not file any affidavit in evidence also. On 28-7-2010 management evidence was closed.

I have heard the A.R. of the parties and perused the record. My findings on various issues are as follows:—

Issue No. 1 & 2

Both the issues being inter-connected are being taken up together. It is not dispute that the workman belongs to a non- subordinate cadre and he was transferred from Ballabgarh Branch of Faridabad district to Nangaljat branch of Mewat District. The transfer order is contained in the Memo dated 21-6-2005 filed by the workman as Annexure-I of the claim statement. Annexure-VI of the claim statement is a communication from the bank to the workman in reply of his letter. Through Annexure VI the workman was informed that by the time management received the official communication of formation of Mewat District the general transfer exercise was over and his representation will be considered during the general transfer 2006. As it has been mentioned in the rejoinder of the workman, his A.R. argued that the management in asserting so is not telling the truth. The notification about the creation of Mewat District is Annexure-II of the claim statement and is dated 4-4-2006. It is a public notice and management cannot be allowed to say that it was not within its knowledge. I agree within the A.R. of the workman that the transfer of the workman from Ballabgarh to Nangaljat was a transfer to another district.

Annexure-IV of the claim statement contains the VIII Bi-partite Settlement which provides deployment of staff. According to it a workman in the non-subordinate cadre may be deployed within a district irrespective of the distance involved. In cases necessitating deployment outside district the workman concerned may be deployed to any branch office of the bank situated outside the district up to a distance not exceeding 100 K.M. from his place of posting. Obviously the case of the workman is that of deployment outside the district.

The bi-partite settlement also provides that a workman in the non- subordinate cadre, so long as he serves in the deployed centre shall draw a lump-sum amount of Rs. 400 P.M. (not ranking for any other benefit) besides protection of emoluments drawn at the original centre. Therefore, it is also clear that as the workman was deployed outside the district he is entitled to lump-sum amount of Rs. 400 P.M. besides protection of emoluments drawn at the original centre as per provisions of the bi-partite settlement. The bank is not justified in refusing the said allowances and emoluments to the workman. The letters of the bank dated 28-11-2006, 31-5-2008, 30-12-2008 and 3-3-2009 Annexure VIII to XI of the claim statement shows that management in allowing disallowing and re-allowing the allowances in question was in a fix and was not able to take any firm decision in the matter. I hold that the workman is entitled to Rs. 400 P.M. emolument amount+ protection of total emoluments during the period he is posted at the deployment centre on Nangal Jat district Mewat the bank is not justified in refusing the same. Issue No. 1 and 2 are decided in favour the workman accordingly.

Issue No. 3

The relied claimed by the claimant for a direction to management to repatriate him to the original centre and to pay Rs. 1,78,665 and also to take action against the officials in resorting to unfair labour practice are all beyond the scope of reference. For the adjudication of the dispute under reference only this much can be and is held that the action of the bank management in not paying the allowance and protection of emoluments on being transferred on re-deployment from Ballabgarh District Faridabad to Nangal Jat District Mewat as per VIII Bi-partite Settlement w.e.f. 27-6-2005 till date is not just, fair and legal. The workman is entitled to the said allowances and protection of emoluments from the date of his joining at Nangal Jat branch and during the period of his posting at the said branch. Reference is answered accordingly in favour of the workman. Let two copies of award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 14 जून, 2011

का.अ. 117/2004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 1/ के अनुसरण में, केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या सीजीआई टी ए ऑफ 117/2004 (आईटीसीसं. 94 ऑफ 1998 ओल्ड)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-17012/16/98-आईआर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. CGITA of 117/2004 (ITC No. 94 of 1998 old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 14-6-2011.

[No. L-17012/16/98-IR(B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present: Binay Kumar Sinha, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad, Dated 7th of June, 2011

Reference: ITC No. 94 of 1998 Old

Reference: CGITA of 117 of 2004 New

The Divisional Manager,
Life Insurance Corporation of India,
Jivan Prakash Building, Relief Road,
Ahmedabad.

.....First Party

V/s

Pravinbhai T. Trivedi,
6/70, Rushikeshnagar, Haripura,
G. H. Board, Maninagar,
Ahmedabad

.....Second Party

For the first party Shri M.J. Sheth, Advocate,

For the second party workman Shri K. T. Trivedi, President
of Gujarat Kamdar Panchayat.

AWARD

As per Ext. 1 the appropriate Government of India, Ministry of Labour & Employment/Shram Shakti Bhawan, Rafi Marg, New Delhi by its order No. L- 17012/16/98-IR(B-II) dated 20-10-1998, in exercise of powers conferred by clause (d) of sub-section (1) sub-section 2(A) of Section 10 of the ID Act, 1947 referred the dispute for adjudication as per schedule.

SCHEDULE

“Whether the action of the Management of LIC of India imposing the penalty of reduction of basic pay to the minimum and order to recover to Rs. 23,261. 10 ps. under Regulation 39(1) (C) of the LIC of India (Staff) Regulation 1960 and vide order dated 24-11-1997 imposition of penalty of removal from the service and order to recover to Rs. 44,975.40 ps. under Regulation 39(1)(C) LIC of India (Staff) Regulations, 1960 to Shri Pravinbhai T. Trivedi, Ex.-Record Clerk, is justified, If not what relief the workman concerned is entitled to ?

(2) For making context in this Reference the second party workman filed statement of claim at Ext. 4 pleading inter-alia that he joined in the service of the first party LIC on 22-12-1972 and his service record was clean prior to year 1987 and earlier he was not charge with any misconduct. Suddenly on flimsy grounds show cause notices were issued to him to reply to the two sets of the chargesheet dated 13-09-1987 and the first party Corporation also put him under suspension. He had given reply to both sets of chargesheet denying the allegation made against him under the memorandum of chargesheet. Further case is that he was posted on deputation in branch No. 5/842 as Addressograph Machine Operator but the first party

Corporation had not allotted him permanent table for discharging works. So, instead he used to do the work of printing the policy on the table of other employee whenever other employee was absent. His case is that during the period of 8 months from 4-11-1986 to 13-08-1987 he was doing the work of printing the policy on Addressograph Machine in branch No. 5 and the Corporation had paid him Rs. 25 per month as allowances as Addressograph Machine Operator. Further case is that the departmental inquiry was conducted against him without following Principles of Natural Justice and giving opportunity to defend himself. Further case is that he was not doing the job of record clerk in the branch 5/842 and that he was not dealing in cheque movement register to receive it from the account department and that he was also not doing the work as dispatcher to dispatch the letters and documents received from other table at branch through register post. Further case is that the table mentioned in the punchnama prepared by the Police Officer in presence of witness had not been allotted to him rather that table was of dispatch clerk Shri S.V. Darji who had gone on long leave. His further case is that since the table of S.V. Darji clerk was vacant so, as per instruction of the Branch Manager, he was sitting on that table and discharging the duty of Addressograph Machine Operator. Further case is that the punchnama paper was not relevant to connect him that those papers recovered under punchnama was kept by him in utter disregard to discharge of his duty and in as much as none of the paper recovered through punchnama go to connect him that any of recovered paper was belonging to him. Further case is that in the Departmental Inquiry the charges could not have been substantially established by oral evidence and documents and findings of the Inquiry Officer is perverted and not based on the evidence produced in the Departmental Inquiry. Further case is that the documents recovered from the said table under punchnama were not produced in the Departmental Inquiry by the Management of LIC of India. There was no evidence to prove that he committed fraud under policy No. 15424233/34/35/36 with respect to the policy on the life of Shri J.M. Mistri or under policy No. 15634350 on the life of Shri Becharadas Jethabhai Patel and that there is no evidence to connect that those policy holders did not apply for 2nd the loan and in the garb of their application second loan was sanctioned with holding the papers of first loan and there was no evidence that the cheques prepared in their names by the department was received by him under cheque movement register for dispatching to the concern policy holders and it was also not proved that the cheque movement register contains his signature in token of receipt of those cheques and there was also no connecting evidence that amount of those cheques were usurped by him for wrongful gain. Further case is that the Disciplinary Authority did not

consider his second show cause notice and had passed illegally two counts of punishment order, firstly imposing penalty of reduction of basic pay to the minimum and for recovery of the amount of the cheque and secondly also imposing the penalty of removal from service and for recovery of the amounts of the two cheques. It has been contended that the punishment order imposed against him is unwarranted and without any justification and is fit to be set aside. On these grounds prayer has been made for his reinstatement with full back-wages and consequential reliefs compensation and cost.

(3) The first party corporation filed its written statement against the statement of claim at Ext. 6, pleading inter alia that the Reference is not maintainable and is fit to be dismissed. It has been denied that the second party workman was posted in branch 5 on deputation basis as Addressograph Machine Operator, rather he was posted there as Record Clerk and was provided a specified table for doing work as Record Clerk and was receiving cheques from the Accounts Department under cheque movement register and has a duty to dispatch the documents including cheques to the concerned person through Registered post and for making entry regarding dispatch of the letters and documents. It has been denied that the service career of the second party workman was clean, rather it has been stated that the second party workman wherever posted in different branches he was involved in nefarious activities and not doing his work honestly and diligently rather working in such illegal manner which was detrimental to the interest of the corporation and prejudicial to good conduct. Further stands is that the 2 sets of chargesheet dated 30-09-1987 were established in the Domestic Inquiry through evidence of the witness and the documents and the findings of the Inquiry Officer was not perverted rather it was based upon the sound footing on weighing the oral and documentary evidence. All opportunity were granted to the chargesheeted workman (second party) to defend himself and that entire Inquiry Proceedings was conducted in presence of the chargesheeted workman. The second party workman was intentionally adopting delay tactics in conclusion of the Inquiry Proceedings due to approaching to the Hon'ble High Court and so further Inquiry Proceedings was stayed and after the vacation of the stay order from the Hon'ble Court. Inquiry Proceedings could be concluded and during long span of period, several Inquiry Officers were appointed one after another either due to their retirement or due to transfer from the place. Further case is that for two sets of chargesheet of the same date 30-09-1987 chargesheeted workman was put under Departmental Inquiry and on proof of the allegation under chargesheets, he was rightly imposed punishment of reduction of basic pay to minimum and also order for recovery of the cheque amount of Rs.

23261.10 ps. in connection with LIC policy Shri Bechardas Jethabhai Patel and also on prove of the second chargesheet of the same date 30-09-1987 regarding the amounts of cheque of Rs. 26159 and 18816.40 total of Rs. 44975.40 ps. in connection with four policies of Shri J.M. Mistry also for its recovery from him and also imposing the punishment for his removal from service are justified under the Regulation 39 (1) (G) of the Staff Regulation 1960. Further case is that in view of the gravity of the charges levelled against the chargesheeted workman (second party) the punishment inflicted upon him to the final orders dated 22-11-1997 and 24-11-1997 are legal, proper and justified and the second party workman is not entitled to any of the relief as claimed. Such averments of the second party workman is incorrect that he has not committed any misconduct as enumerated in clause 21 and 24 of the LIC (Staff Regulation 1960), the demands of the second party for his reinstatement with continuity of services with full back-wages is unjustified and the Reference is fit to be rejected. Alternative stand was taken that Domestic Inquiry held against the second party workman, in accordance with well laid down Principle of Natural Justice, however while deciding the present Reference, if, this Tribunal comes to the conclusion that the inquiry is vitiated, then the first party be given opportunity to prove the charges levelled against the second party workman by leading proper evidence before the Tribunal, in order to justify its action. 1st party Management at per Ext. 232 amends its written statement taking stand that LIC is not Industry so provision of LD. Act not applicable.

(4) The propriety or otherwise of the Domestic Inquiry held against the second party (delinquent workman) was taken up as preliminary issue and by order dated 30-04-2003 vide Ext. 8 the Departmental Inquiry conducted against the delinquent workman (second party) was held to be illegal and the first party LIC was directed to justified its action by producing evidence before this Tribunal taken against the delinquent workman as per the punishment order dated 22-11-1997 and 24-11-1997 respectively.

(5) The first party in order to justify its action taken against the second party (delinquent workman) adduced fresh oral and documentary evidence during which Management Witness Shri S.M. Shah, vide Ext. 234 and Shri Bechardas Jethabhai Patel vide Ext. 237 and Nirmala P. Asnani at Ext. 238 were examined by the first party and corss-examined by the second party workman and two sets of chargesheet dated 30-09-1987 were marked Ext. 14 and 15 from the Domestic Inquiry file. The reply letters of the second party workman Shri Pravin T. Trivedi to the

chargesheet were marked Ext. 16 and 17. Besides this other documents including the extract of the LIC Staff Regulation 1960 were marked Ext., in this case. On the other hand the second party workman examined himself at Ext. 241 and was cross-examined by the Lawyer of the first party corporation. In the midst of the argument, the first party corporation provided English translated version of the oral evidence of the Management Witness as well as of the second party wokman. Like wise in the midst of argument the second party workman also filed with list of documents, English translated copy of Judgment delivered by the Criminal Court in case No. 714/91, English translated copy of FIR dated 13-08-1987, translated copy of Police Punchnama dated 13-08-1987 and the translated copy of deposition as well as cross-examination of N. Asnani at Ext. 238 requesting to peruse and considered those documents in this case.

(6) In view of the rival sides contentions taken as per statement of claim and written statement and also as per fresh evidence adduced by the first party corporation to justify its action so taken against the chargesheeted workman and oral evidence and documents of the second party, the following issues are taken up for discussion and consideration.

ISSUES

- (I) Whether the Reference is Maintainable?
- (II) Whether the first party management by adducing fresh evidence and material, before this tribunal could have been able to justify its action so taken against the delinquent workman (second party)?
- (III) Whether the order of punishments are shockingly disproportionate to the gravity of the charges dated 30-09-1987 levelled against the second party workman?
- (IV) What relief if any, the second party workman is entitled?

(7) ISSUES No.II

Firstly, before scrutinizing the materials on the record details of the two sets of chargesheet has to be mentioned. Both sets of charge sheet were issued to the second party workman dated 30-09-1987. The first chargesheet reads and follows-

You Shri Pravin T. Trivedi record clerk in our CPO No. 5/842/ Ahmedabad are hereby charged as under

That you have committed fraud under policy No. 15634350 on the life of Shri Bechardas Jethabhai Patel serviced by order CBO No. 5/842 wherein even though

previous loan had been raised under the policy in the year 1984, fresh loan was raised in the month of May, 1987 without adjusting the previous loan. You removed the previous loan paper from the policy file and loan paper from the loan bond packet. Fresh loan application was put up making it appeared that there was no previous loan under the policy. This has resulted in granting fresh loan under the above policy without deducting the existing the loan amount.

A cheque No. 786490 dated 30-05-1987 for Rs. 23261.10 drawn on the Bank of India, in Pankomaka Branch Ahmedabad, in favour of the life assured Shri Becharadas Jethabhai Patel was prepared by account section of the branch and sent to dispatch section of the branch through cheque movement note book on 30-05-1987 and which cheque was received by you under your signature on 1-06-1987 since you were looking after dispatch section. The said cheque was required to be dispatched by registered post by making an entry in the dispatch register maintained by you, but as stated above the said cheque which was received by you on 1-06-1987 had not been dispatched as no such entry is made in the dispatch register maintained to that effect. During the course of further investigation it has been found that the said cheque was credited to SB A/c No. 61292 in Central Bank of India, Gandhi Road Branch, Ahmedabad, in the name of above policy holder. The policy holder Shri Becharadas Jethabhai Patel has informed as that he has not made any such loan application in the year 1987 to raise loan under his policy and that he has not received any cheque towards the loan under the policy in the year 1987.

It has been found that a fictitious account in the name of Shri Becharadas Jethabhai Patel was opened in Central Bank of India, Gandhi Road Branch, Ahmedabad and thus fraud has been committed by you.

The second sets of chargesheet was as follows "that you have committed fraud under the policy No. 15424233/34/35/36 on the life of Shri J.M. Mistry serviced by our CBO No. 5/842 wherein, even though previous loan was raised under the policy in the year 1983, fresh loan was advanced in the month of July, 1987 without adjusting the previous loan. You removed the previous loan papers from the loan bond packets. Fresh loan applications were put up making it appear that there were no previous loans under the policies. This has resulted in granting fresh loans under the above policies without deducting and existing loan amount. The previous loan paper and the policy files covering the papers under the above four policies have been traced from the drawers of your table which you were using in CBO No. 5/842.

It was further observed that two cheques towards fresh loan under these policies were issued on 24-07-1987 No. 945609 and 945610 amounting to Rs. 26159 and

Rs. 18816.40 respectively. These cheques were drawn on the Bank of India, Pankomaka Branch, Ahmedabad, in our A/c No.4 and the same were credited to the SB A/c No. 5581 on Union Bank of India, Mehsana. SB A/c which were opened in Union Bank of India, Mehsana and the accounts to which proceeds of the above two cheques were credited, were found to be fictitious.

The policy holders Shri J.M. Mistry has informed as that he has never raised any loan in 1987 other then the previous loan which was raised by him in 1983 and thus a fraud has been committed by you".

(8) In the aforesaid both chargesheet marked at Ext. 14 and 15 respectively, it has been mentioned interalia as under "By your aforesaid acts you failed to maintain absolute integrity and devotion to duty, failed to serve the corporation honestly and faithfully, acted in a manner detrimental to the interest of the corporation and prejudicial to good conduct and thereby committed breach of Regulation 21 and 24 read with Regulation 39 (1) of LIC of India Staff Regulation 1960, for which anyone or more of the penalties specified under Regulation 39 (1) (a) to (g) of the aforesaid Staff Regulation 1960, can be imposed on you".

By issuing the two sets of chargesheet the delinquent workman was directed to state in writing within the period of 15 days from the date, whether he pleaded guilty of the charges mentioned above and in case of the statement of denial to the charge to be submitted to the undersigned within 15 days from the date of the chargesheet was issued together with list of documents to the delinquent workman.

(9) From going through the details of the chargesheet it appears that the delinquent workman was working as Record Clerk on specified table allotted to him in branch No. 5/842 Ahmedabad and he was dealing in receiving the documents from the different department of this branch for its dispatch and was also receiving the cheques under cheque movement note register for its dispatch to the concerned policy holders. So, now coming to deal with the materials and evidence on the record how far the LIC Management have established the charges that by such misconduct details in the two sets of chargesheet, how far it has been proved that the delinquent workman had failed to maintain absolute integrity and devotion to duty, failed to serve the corporation honestly and faithfully, acted in manner detrimental to the interest of corporation and prejudicial to good conduct which comes under pervue of breach of the Regulation 21 and 24 of the LIC Staff Regulation 1960, which after prove is punishable under Regulation 39 (1) (a) to (g) of the aforesaid Regulation 1960.

(10) In support of the two chargesheet dated 30-09-1987 vide Ext. 14 and 15, the first party have examined

the 3 witness during inquiry conducted before the Tribunal. The Management Witness Shri S.M. Shah as per his evidence at Ext. 234 deposed that he retired in the year 1999 from the services of the LIC. He was knowing concerned workman Shri Pravin T. Trivedi who was working as a Record Clerk in branch No.5 in the year 1986 to 1987 and prior to this he was working in branch No.10. Further deposed that before giving charge-sheet to the concern workman Shri Trivedi, Senior Divisional Manager had entrusted him to conduct Preliminary Inquiry and after making inquiry he submitted the report on 22-08-1987 to the Senior Divisional Manager. During the Preliminary Inquiry, he had examined the policy of insurance holders like P.M. Shah, Shri Mistry, Shri Patel, Shri Gandhi and Shri Satish Chawda the policy service of P.M. Shah was done in branch No. 10 but thereafter, he was transferred in branch No. 12/856. He further deposed that it was found that insurance holders Shri P.M. Shah had availed the loan in the year 1983 and 1984 and had not apply actually for the second loan, but again an application for loan was received in the year 1986 and 1987 prepared by other person. There was no mention about his earlier loan the relevant paper for the first loan of the year 1983-1984 was found to be removed from the file. The insurance holders Shri P.M. Shah did not receive the cheque prepared by the LIC towards the loan in the year 1986-1987 because as per his saying he had not made any application in the year 1986-1987. Vide para 5, he also stated about the details of his Preliminary Inquiry on the second loan applications and regarding issuing of cheques to the other policy holders. Vide para No.7 he deposed that during the Preliminary Inquiry he also checked the records regarding policy in branch No. 5/842 in which the correction amendment were found to be seen in the entry made in the account register and payment book and therefore the correct policy number was obtained and record was checked accordingly. During the inquiry one entry of cheque No. 786490 was made in policy No. 15634350 of one policy holder Shri Becharadas Jethabhai Patel, he also checked movement register and there was entry of the cheque in that said register and Smt. Asnani, the Administrative Officer of the branch identified the signature to be of the concern worker Shri Pravin T. Trivedi who at the time working there as Record Clerk in branch No. 5/842 and it was found that the cheque No. 786490 which was in the name of (policy holders B.J. Patel) was taken by the concerned worker Shri Pravin T. Trivedi by making signature in the cheque movement register. Further deposed that the cheques of the loans to any insured are sent by register post, but there was no entry in the dispatch register regarding dispatch of the aforesaid cheque of Shri Becharadas Jethabhai Patel by registered post. On inquiry it was also found that the Insurance Holder Shri Becharadas Jethabhai Patel had not received cheque. The workman Shri Trivedi had taken this cheque after making signature

in the cheque movement register and this cheque was not dispatched by Shri Trivedi and it was retained by him. Vide para 8 he deposed that the irregularities regarding insurance loan which have been committed in branch No. 5/842 where earlier committed in branch No.10 also and during that period in which said irregularities were committed, the workman Shri Pravin T. Trivedi was transferred from branch No. 10 to branch No.5. He further deposed that when Shri Trivedi was in branch No.10 the identical incident had occurred and when he came in branch No.5 on transfer, at the time said irregularities occurred in that branch. Vide para 9 he deposed that a Police complaint was also lodged against Shri Trivedi and in connection with investigation of the Criminal Case lodged against him and the other Police Officer had opened the drawers of the table of the workman Shri Trivedi in presence of Shri R. Parekh, Branch Manager of Branch No.5 as well as Shri Diwanji, Shri Parmar, Shri S.K. and in his presence and also documents recovered under punchnama from the table of the workman were found from the drawers. He deposed that those documents were original of the Insurance holders who had earlier availed the loans once earlier and had not made application for loan for second time and that other insurance holders had neither made signature or the second time loan bond nor have they even received the cheques of the second time loans and those policy holders did not have the accounts in the Bank in which the said cheque have been credited. He further deposed that the insurance holder Shri J.M. Mistry had not made an application for second time loan and Shri Mistry had stated in writing that he has not received the cheque of second time loan. Vide para 10 he deposed that in the year 1987 cheque No. 945609 and 945610 were sent from the branch No. 5/842 on 25-07-1987 to dispatch section and on checking the dispatch register it was found that the said cheques were not dispatched to the concern policy holders. Vide para 11 he deposed that those cheques issued by the LIC were credited to the account in Union Bank of India, Mehsana Branch. Vide para 13 he deposed that insurance holders Shri Becharadas Jethabhai Patel whose policy number was 15634350 also had informed that he had not made any application for availing second time loan. Vide para 14 he deposed that the documents of the insurance holders Shri Becharadas Jethabhai Patel and Shri J.M. Mistry were found from the drawers of the table of the concern workman Shri Pravin T. Trivedi, it was also found during the Preliminary Inquiry that entries of those cheques for dispatch to the insurance holders Shri Becharadas Jethabhai Patel and Shri J.M. Mistry were not made in the dispatch register. During the cross-examination, it has come that punchnama paper regarding recovery of the documents from the drawers of the table of the concern workman was signed by Ramanbhai Purshottambhai and Subhashbhai Mer. He admitted that the drawers of the table were not locked rather drawers of the table were already opened from the

beginnings. During the cross-examination, he admitted that the work of preparing loan voucher is of the Account Department and of the Policy Services Department. The Assistant of Policy Services Department is preparing the payment vouchers. He further deposed that cheque is prepared in the Account Department, he deposed that cheque movement register was prepared in the year 1987. He admitted that it had not been found the cheque movement register in most of the cases, rather it was found in one case. During the further cross-examination, this witness Mr. S.M. Shah has clearly stated that there was no Addressograph Machine in the year 1987 in branch No.5 and that he does not remember whether the Record Clerk was doing work of printing the policy papers on Addressograph Machine or not. He deposed that the agent were giving authority and taking away the loan cheque and at that time giving cheques, their signatures were obtained. Form going through the evidence of Management Witness Shri S.M. Shah, it has come that the concerned workman was doing the duty of Record Clerk in branch No. 5 in the year 1987 and was allotted a specified table with drawers which was used by him, and that he had received the cheque of policy holder Shri Becharadas Jethabhai Patel through cheque movement register and his signature was identified by another Management Witness Smt. N.P. Asnani in presence of the witness Shri S.M. Shah, During the Preliminary Inquiry conducted by, it has also come that though this witness Shri S.M. Shah was not signatory to the punchnama papers as a witness, but he was also present at the time of punchnama drawn by the Police Officer, he also deposed that the policy papers of Shri Becharadas Jethabhai Patel and Shri J.M. Mistry Besides other policy holders were recovered from the drawers of the table used by the workman. On the other hand the concerned workman through cross-examination could not establish his such stand that he was not doing the work of Record Clerk in receiving the papers, cheques for dispatching to the policy holders rather he was working on Addressograph Machine for printing the policy papers.

(11) Next witness of the Management is Nirmala P. Asnani who was examined and cross-examined at Ext. 238(C), deposed that during the year 1987-1988 she was working as Administrative Officer in LIC at Branch No. 5/842 of the LIC Office at Relief Road, Ahmedabad, as Administrative Officer she had to look after policy servicing, claims and administration of the Department, she further deposed that the workman Pravin T. Trivedi was working as Record Clerk in the said branch No. 5/842 who was served with two charges both dated 30-09-1987. Her further evidence is that Pravin T. Trivedi as Record Clerk in the said branch was performing the duty regarding inward of letters received from the different Department in

the dispatch section, to make entries in the register of letter received and to dispatch the letters and he had to perform the duty of receiving cheques from the Accounts Department. Her further evidence is that she came to know through Mr. Sundarlal and Virchandra Parmar who had came to our department that certain fraud has taken place with regard to loan policies and surrender value of policies the year 1987-1988, the necessary books ledgers files, cheque movement registers were shown to them and in this connection she had identified through cheque movement register, that the cheque of policy holder Shri Becharadas Jethabhai Patel was received by the workman Pravin T. Trivedi in the dispatch section under his signature. She had identified vide para 5. She deposed that on verification of dispatch register she found that there was no entry of the said cheque of Shri Becharadas Jethabhai Patel and on inquiry the said cheque was also not found. She further deposed that on that day the drawers of the table of Trivedi (workman) were opened by the Police officer in presence of the witness including Divisional Manager, Branch Manager and other persons and also in presence of herself. She further deposed that in the drawers of the table of Pravin T. Trivedi some policy packets, loan packets, policy ledgers, loan ledgers and Bank passbooks were found. Her further evidence is that if the cheque is not entered in the dispatch register, the same might be with the person who had received the same and the cheque might have been misplaced. According to her, the concern Record Clerk (Pravin T. Trivedi) is responsible if the cheque is misplaced or not dispatched, though received in the dispatch department by him. Her further evidence is that in such case the Record Clerk (Pravin T. Trivedi) has to lodge complaint to his higher officers regarding misplace of cheque. But she had not received the complaint lodged by Mr. Trivedi Record Clerk in support of misplacing the cheques. She was cross-examined by the second party workman and she stood the test of cross-examination. Nothing could have been gained to discredit her testimony only such contradiction has come that this witness Nirmala P. Asnani said that the drawers of table of the second party workman was locked which was broke opened whereas witness S.M. Shah at Ext. 234 stated that the drawers of the table used by the workman Pravin T. Trivedi was not locked however both the witness at Ext. 234 and N.P. Asnani at Ext. 238 have supported that the police had come in the branch No. 5/842 in connection with the Police Complaint case and has prepared punchnama in their presence and also in presence of the two signatory witness to the punchnama. Though the witnesses to the punchnama have not been examined, but since these two Management Witness were also present during the preparation of punchnama from the table drawers of workman Pravin T. Trivedi. So, their

evidence are relevant to this extent that the table and the drawers was used by the workman P. T. Trivedi as Record Clerk and that he had duty to make inward entry in the receipt register and then to dispatch the letters, cheques etc. received by him to the addressee/policy holders. Both witnesses have also supported that the signature of the workman in cheque movement register was identified that the workman had received the cheque of Shri Bechardas Jethabhai Patel and was duty bound to dispatch to the concern policy holders through register post with AD by making entry in the dispatch register. But the dispatch register on verification was found nil regarding entry of the said cheque.

(12) At Ext. 237 Shri Bechardas Jethabhai Patel was examined by the first party Management and cross-examined by the second party workman. He is a concern person in his name a cheque was issued from the Account Department and was received by the second party workman Pravin T. Trivedi as Record Clerk in the dispatch section in cheque movement register and his signature was identified by the Management Witness at Ext. 234 and 238 already discussed above. The witness Shri Bechardas Jethabhai Patel deposed that he had taken policy from the LIC and he had taken loan on the said policy but he had not made second time loan application on his policy. He further deposed that he had only saving account with Aapni Sahkari Bank, Dariyapur, and he have had no any other account in any other Bank vide para 2, he was shown paper marked at Ext. 235/1, an application form for opening an account in Central Bank of India, Gandhi Road, Ahmedabad and he denied that the application form contained his signature. He deposed that the name written in this application is wrong and it does not contained his signature marked as 236/2 was not filed by him, and the address mentioned in this form does not belonging to him, the name Kantilal shown as nominee is not his any relative and he does not know him. He deposed that he has no any son name Kantilal. He deposed that he has son name Dineshbhai, Mahendrabhai, Bipin and one daughter name Kokila, thus whereas Shri Bechardas Jethabhai Patel has flatly disowned filling of any application form for opening an account in Central Bank of India and also disowned filling up the nomination form and also denying the nominee Kantilal being his any relative. He also deposed that the form for opening an account has not been filled up by him which is marked at Ext. 236/3. Likewise, he has denied to have filled up deposit slip for depositing cheque in the Bank of India branch, Gandhi Road, Ahmedabad. This has been marked at Ext. 236/4 he further stated that he has not received the cheque amounting to Rs. 23261.10 and the said cheque had not been deposited in my Bank (Aapni Sahkari Bank). He further deposed on seeing the withdrawal form of Central

Bank of India, Gandhi Road, Ahmedabad marked at Ext. 236/6 that he had not made withdrawal of Rs. 23200 and the signatures mentioned in the withdrawal form does not belong to him and the signature on the reverse of the cheque does not also belonging to him. Therefore, his evidence and on perusal of the papers marked at Ext. 235/1, 236/1 to 236/6 as discussed above, it has been established that the policy holders Shri Bechardas Jethabhai Patel had not applied for second time loan on his policy and the cheque amounting to Rs. 23261 was prepared by the LIC in his name on the basis of his so, called loan application and that if the cheque issued in his name, the said cheque was not received by him as policy holder nor he had deposited the cheque in the branch Central Bank of India branch office, Gandhi Road, Ahmedabad, also clearly stated that he has only one saving account running at Aapni Sahkari Bank, Dariyapur and he had not filled any application form and nomination form nor filled up the forms for opening an account in the Central Bank of India nor deposited the said cheque with deposit in the said Central Bank of India Branch nor had withdraw an amount of Rs. 23200.

(13) The first party has also produced the two original cheques amounting to Rs. 26159 and 18816.40 both dated 24-07-1987 issued from the LIC in the name Jitendra M. Mistry. It is the case of the first party that these two cheques were deposited on the Union Bank of India branch, Mehsana and was credited in the fictitious account opened in the name of J. M. Mistry, though the said policy holder J. M. Mistry had informed in writing to the Management of LIC that he had no any account in Union Bank of India branch, Mehsana and that he had not also applied for second time loan on his 4 policy papers on the basis of which the loan in his name was sanctioned and the two cheques issued. Though the said policy holders J. M. Mistry has not been examined in this case, but the circumstances goes to show that he had applied first loan on his policy papers and had not applied for second time loan on his said four policy papers and that those two cheques were not received by him.

(14) Now coming to the evidence of the second party workman Pravin T. Trivedi on Ext. 243 he deposed that he joined in services of LIC on 22-12-1972 he admitted that he was served with two chargesheet dated 30-09-1987 and that he has been put under suspension by the corporation and that he has given reply to both chargesheets. He admitted that the allegation is false that he committed misconduct as per allegation mentioned in both chargesheet dated 30-09-1987, he further deposed that he was posted in branch No. 5/842 on deputation whereas the Management Witness at Ext. 234 and 238 have deposed that, he was transferred in the said branch as Record Clerk. It is immaterial whether the concern workman was posted

on deputation in branch No. 5/842 or he was transferred from branch No. 10 to 5 under the Management order. But this much is obvious that at the relevant time when some fraud in policy papers and loan papers and irregularities were detected in the said branch No. 5/842, the concern workman was working as Record Clerk. There is no supporting evidence on the side of the second party workman that he was working as Addressograph Machine Operator. This is only his version having no leg to stand in view of the evidence of the two Management Witness at Ext. 234/238 that the workman Pravin T. Trivedi was doing the job of Record Clerk and had duty to make inward in the register receipt of the papers received from the different department of said LIC branch and had also duty to received cheque issued from the Account Department for its dispatch to the policy holders through register post after making entry in the dispatch register. His such evidence has also no leg to stand that the corporation has not given him permanent table and he was working on the vacant table of employee who was on leave. It has been proved through Management Witness that he had been given table for his work in the dispatch section as Record Clerk. However, he was cross-examined by the lawyer of the first party Management. The workman admitted that the corporation had given him promotion as Record Clerk from 01-01-1978 and he had discharged the duty as Record Clerk in Accounts Branch No. 10, 12, 1 and 5, he also admitted that if the loan was sanctioned to a policy holders the cheque was prepared in Account Department and the said cheque of the loan is to be sent to the policy holders by register post with A.D. he also admitted that after the cheque is dispatched the loan paper are sent back in the record room. Further he show ignorance that if the policy holders want to avail the loan second time, the loan is sanctioned after adjusting the earlier loan. Further he admitted that if the policy holders could take the loan for second time the cheque thereof also is dispatched to the policy holders by register post with A.D. he also admitted that after dispatch of cheque of the second time loan paper are sent back in the record room, he admitted that at the time he was working in branch No. 5/842 and Smt. Asnani was working as Administrative Officer in the said branch and Sundarlal Shah working as a Manager in the said branch. He also admitted that the facts that since the cheque of loan were mis-appropriated, the Senior Divisional Manager of LIC had appointed Shri Sundarlal as Investigation Officer for Investigating facts he admitted that Sunderlal had lodged a Police Complaint in Karanj Police Station and the Police Case was filed regarding the cheques of loan mis-appropriated in branch No. 5, 10 and 12 he further show ignorance that the Police Officer prepared punchnama in presence of the witness, again he said that he is knowing that punchnama was drawn. He further said he does not know that some papers were found

from his table when the Police had drawn the punchnama. He admitted that he has an account in Bank of India, Pankornaka Branch having account No. 3933, he admitted that in branch No. 5/842 the first party corporation had given him steel table having 3 drawers however he stated that it is not a fact that there were passbook and pay-in slip book of his Bank Account, in the drawers of said table though the second party has denied that from the drawers of his table the Bank passbook account No. 3933 was also recovered from his table in Police Investigation, though the documents prepared in punchnama have not been produced by the first party Management before this Tribunal, but the second party workman during midst of argument have filed some translated version of documents which are the deposition of Management Witness Nirmala P. Asnani at Ext. 238 and translated copy of Criminal Court Judgment in Criminal Case No. 714/91, translated copy of FIR dated 13-08-1987 on the basis of which police investigated the case and arrested second party workman in connection with Criminal Case and also translated copy of Police Punchnama dated 13-08-1987 has been filed. There is plea of the first party corporation that since Police had recovered and seized all the documents recovered from the table of the second party workman in connection with Criminal Case and those documents prepared under punchnama were made part of the investigation and subsequently produced in the Criminal Case and that since the Criminal Case was pending so, those papers could not be produced during the Domestic Inquiry nor those papers could be produced before this Tribunal in connection with this Reference case such explanation advanced on behalf of the first party appears to be tenable that those recovered papers under the punchnama were attached with the Criminal Case record so, could not be produced in the Departmental Inquiry, it has also been submitted on behalf of the first party that some correspondence had been made with Criminal Court calling for the papers recovered from the table presence of the second party workman (one of accused in the Criminal Case) for producing in its Reference case, but no any reply was sent from office of the Criminal Court and due to the reason all the relevant document seized under the punchnama from the table of the second party workman (one of the accused in the Criminal Case) remained attached in the Criminal Case record. By filing the translated version of the said punchnama on behalf of the second party during the midst of argument, it has been urged on behalf of the second party to take into consideration those papers too, while deciding this Reference case. A perusal of the translated version of punchnama dated 13-08-1987 prepared at 2.30 hours on 13-08-1987, you appears that its material contents were recovered through punchnama by the Police Officer from the table of the second party workman Pravin T. Trivedi (one of the accused in the Criminal Case) in item No. 11

particularly was the passbook of Pravin T. Trivedi (second party workman) of Bank of India, Pankornaka branch having an account No. 3933 this go to connect that the table used by the second party workman in branch No. 5/842 was steel table having 3 drawers and from the drawers besides other documents his passbook with pay-in slip book was also recovered having an account. No. 3933 of Pankornaka Branch. Though the second party workman during cross-examination tried to deny that no such passbook and pay-in slip book was recovered from the drawers, but recovery of the Bank passbook having an account No. 3933 of Pankornaka Branch which the second party admitted that he has S.B. A/c No. 3933 go to connect that the table and drawers from which as many as 14 items of papers were recovered under punchnama was used by the second party workman in discharge of his duty besides his S.B. passbook and pay-in slip book, there were also other passbook of Mangbhai, Vanjibhai Darji of Book of Baroda account No. 9710 pay-in slip of book of Account No. 3933 of Bank of India, Manekchowk Branch and Pankornaka Branch and passbook of one Mohammed S. Mohammed Pathan of Corperative Bank branch having an account No. 10556, passbook of Panaben N. Gajjar of Central Bank of India, Rélief Road Branch account No. 17344 were siezed. This also go to show a serious question mark on the behavioral boubt of the second party workman that he was not discharging his duty diligently and honestly rather he was also keeping the passbook of 3rd persons besides himself for what purpose it would be bestknown to the second party workman. Through the punchnama the policy files of policy No. 15634350 which is in brown cover of LIC undisputedly connecting the policy holders Bechardas Jethabhai Patel, as per item No. 2 and policy files of policies No. 15424231 -34-35-36 contained the second loan paper in brown cover indisputedly those 4 policies papers was belonging to Shri J.M. Mistry, as per item No. 3 further item No. 5 second policy paper in brown cover of policy file of policy No. 15424233/34/35/36 was also belonging to Shri J.M. Mistry who was holding four policies, also go to connect that one policy-file of Bechardas Patel and four policy file of J.M. Mistry had also been recovered besides other objectionable documents from the drawers of the table used by the second party workman, recovery of such policy papers of Bechardas Jethabhai Patel and J.M. Mistry including the show called application for second loan on their policy speaks a volume about the misconduct of the second party workman connecting him that the second party workman breached/violated clause 21 and 24 of the LIC Staff Regulation 1960, the second party workman was doing the job of Record Clerk and dispatcher he has duty to make inward of the papers receive from the different department of the said LIC branch and then also to received the cheques issued from the Account Department and then to dispatch the cheque to the concern policy holder through register post with A.D. also making entry

regarding this in the dispatch register to policies holders. Bechardas Jethabhai Patel and J.M. Mistry had approached to the first party corporation and disowned to have made an application for second time loan on their policies. Out of the two policies holders, Bechardas Jethabhai Patel deposed and examined before this Tribunal at Ext. 237 clearly denied that he ever applied for second time loan on his policy No. 15634350, also denying that he ever receiving the cheque or that he ever deposited the cheque in the Union Bank of India, Gandhi Road Branch, Ahmedabad, also stating that he has only account at Aapni Sahkari Bank, Dariyapur and not at any other Bank. Though J.M. Mistry has not come to depose, but he had sent application that he is living in Ahmedabad and he has no any Bank Account at Mehsana situated about 100 k.m. away from the Ahmedabad where the two cheques in his names where credited in his fake account opened by someone. More so, the recovery of the policy file No. 15634350 of Bechardas Jethabhai Petel and the policy file of J.M. Mistry containing for policy No. 15424233-34-35-36 containing second loan papers was recovered and seized through police punchnama dated 13-08-1987 from the drawers of the table of the second party workman. The second party workman was not authorized to keep policy files in his drawers, but the policy files of Bechardas Jethabhai Patel and J.M. Mistry besides other policy holders were recovered along with the other papers like different passbook, pay-in-slip book, including the passbook account number of the second party workman with pay-in slip, further speaks a volume that the second party workman was clearly exceeding his right and was collecting in unauthorized way the policy files on different policy holders for keeping on nefarious activities, which was against his integrity and devotion to duty and he failed to serve the corporation honsetly and faithfully, and also acted in manner detrimental to the interest of the corporation and prejudicial to good conduct. The evidence of receiving cheque issued through Accounts Department in the name of Bechardas Jethabhai Patel for an amount of Rs. 23261 on the policy No. 15634350 belonging to Bechardas Jethabhai Patel was received by the second party workman and his signature was identified by the Management Witness at Ext. 234 and 238 that the received signature belonging to second party workman Pravin T. Trivedi Record Clerk who did not make an entry in the dispatch register regarding the said cheque and not dispatching the said cheque through register letter with A.D. to the policy holders Bechardas Jethabhai Patel and the said policy holder Bechardas Jethabhai Patel having no any account in the Union Bank of India, Gandhi Road Branch, rather having only Bank Account in Aapani Sahkari Bank, Dariyapur, also go to connect that the acts of misdeeds/misconduct of the second party workman was detrimental to the interest of the corporation.

(15) It has been argued by Mr. K.T. Trivedi, representative of the second party workman that Domestic

Inquiry was held illegal in the preliminary issue decided by the Tribunal at Ext. 8 and the first party corporation was to justify its action so, taken against delinquent workman by leading fresh evidence in inquiry before this Tribunal. But the first party corporation could not have been able to do so by producing fresh materials and evidences before this Tribunal. He further argued that the second party workman with one more accused faced Criminal Trial in Police complaint lodged under Section 467, 468, 471, 406, 408 and 114 in IPC. But in Criminal Case he and another co-accused B.G. Pathak both were acquitted by Judgment dated 31-07-2007, passed by Metro-Politan Magistrate, City Court No. 5, Ahmedabad. He further argued that LIC had filed Civil Suit RCS No. 3010/1988 against the second party workman Pravin T. Trivedi, B. G. Pathak and Union Bank of India, Branch, Mehsana, making them defendants for the recovery of sum of Rs. 50,373 from those defendants with interest on the basis of the 2 cheques No. 945699 and 945610 dated 24-07-1987 issued in the name of J.M. Mistry by LIC branch No. 5 which was credited in the account at Mehsana, said to be fictitious, but the suit filed by the LIC against 3 defendants including workman Pravin T. Trivedi was dismissed by Judgment and decree dated 31-07-2000, and so, when claim of recovery of the amount of the two cheques as per chargesheet Ext. 15 in the name of J. M. Mistry fails in the Civil Suit brought by the LIC. So, imposing also punishment for recovery of the amount of the cheque from the delinquent workman has no leg to stand. It has been argued that since in Criminal Trial the accused has been acquitted and so, two chargesheet issued to the second party workman by the Management Corporation on the basis of which the management had taken action in reduction of his grade on first count as first punishment and also removal from the services as second punishment and also imposing punishment as to recovery of all amounts has become ineffective and infructuous and more so, the Domestic Inquiry has been vitiated in valid and having no fresh material on the record, this Reference is fit to be allowed and the order of punishment dated 22-11-1987 and 24-11-1987 are fit to be set aside and the delinquent workman is entitled to get back wages and all the consequential benefits. The second party workman has relied upon a case law of G.M. Tank V/s State of Gujarat and Others reported in 2006 (5) Supreme Court Case 446 that since the Departmental Proceedings and the Criminal Case are based on identical and similar sets of facts and the charge in the Criminal case against the appellant and charge before the Tribunal Court are one and the same so, acquittal in Criminal Trial observed, the delinquent workman entitle for a setting aside order of dismissal in the Departmental Proceedings. Other case law relied upon is of Neet Kapilesh V/s Presiding Officer, Labour Court and Another, reported in 1999 (1) CLR 219 S.C. wherein it has been held that appellant clerk in DNC College challenged her dismissal from the services, Labour Court

held Domestic Inquiry to be not fair and proper, Management when called upon, they did not lead any evidence except to produced record of Domestic Inquiry, so, in absence of any fresh evidence by Management, the appellant also did not lead any evidence. The Tribunal dismissed the claim of the appellant which was confirm by the Hon'ble High Court but the Apex Court held with Domestic Inquiry have not been held to be not fair and proper, the evidence of Domestic Inquiry cannot be said to be material on the record and appellant was entitled to grant of relief and thus the case was remanded for fresh disposal.

(16) On the other hand Mr. M. J. Sheth, Learned Counsel, for the first party corporation, argued that the case law relied upon by the 2nd party are not applicable to the facts and circumstances of the case because two chargesheet issued to the delinquent workman vide Ext. 14 & 15 are quite on different sets of allegation that under first-charge the cheque of Becharadas Jethabhai Patel amounting to Rs. 23661 was received by him through cheque movement note book on 1-06-1987 was required to be dispatched the said cheque by register post making entry in the dispatch register of the said cheque, but was not dispatched and not entered in the dispatch register, and it was further came to know that said Becharadas Jethalal Patel had not applied for loan in the year 1987, to raise further loan under his policy and has not received any cheque towards the loan with further allegation that the cheque was deposited in fictitious account in the name of Shri Becharadas Jethalal Patel. Under 2nd chargesheet the facts with regard to the 4 policy number of J.M. Mistry against the delinquent workman, was that J.M. Mistry had not applied for loan in the year 1987 after loan was raised to him in the year 1983 and two cheques were issued in his name, and those cheques were drawn on the Bank of India, Pankornaka Branch, in the connection of LIC. But the said cheques were credited to the SB Account No. 5581 on Union Bank of India, Mehsana in fictitious account in the name of J. M. Mistry, whereas allegation made in the Criminal Case on Police complaint was regarding tampering with records and created false documents and opened a fictitious Bank account and mis-appropriated an amount of Rs. 1,68,170 in connection with as many as 8 policy and so, the charges were not the same in both cases. He further argued that allegation made in the two chargesheet dated 30-09-1987 vide Ext. 14 and 15 mentioned aforesaid facts of his misconduct. It has been held that by the aforesaid action, he failed to maintain absolute integrity and to devotion to duty and failed to serve corporation honestly and faithfully and acted in manner detrimental to the interest of the corporation and prejudicial to good conduct and thereby committed breach of Regulation 21 and 24 read with Regulation 31 (1) of LIC of India Staff Regulation, 1960. The first party has relied upon also two case laws one of State of Gujarat and Others V/s D. Vanjari reported in 2007 CLR 656 in which their lordship held that the

standard of prove in Disciplinary Proceedings are not alike on Criminal Trial, in the Departmental Proceedings under the chargesheet Evidence Act do not apply whereas in Criminal Trial strict standard of proof is required to be proved beyond all reasonable shadow of doubts. On this score it has been held that acquittal in Criminal Case being on technical ground, there is no bar or limitation to Departmental Proceedings. Another case law relied upon is reported in 2007 (4) L.L.N. 721 Rajasthan where is the fact that in Disciplinary Proceedings dismissal order was passed on charge of theft and Labour Court held dismissal legal and valid. But Criminal Court acquitted him giving benefit of doubt to the charge of theft. It has been held that Departmental and Criminal Proceedings operated in different fields, it has been further held that approach, objective, standard of proof etc. were different in the two proceedings. It has been further held that the 3 witness examined in the Departmental Proceedings and same has examined in Criminal Court is of no consequence since Labour Court had itself examined its evidence and material place before. It on the touchstone of preponderance of probabilities. Relying upon the case law it has been argued that the standard of proof in the Criminal Trial to the charges of forgery mis-appropriate etc. requires of strict proof under the evidence Act beyond all reasonable doubt, where as the standard of proof in the Departmental proceedings under the chargesheet is only upon preponderance of probabilities of the delinquent workman for proving his misconduct under the chargesheet for breaching Rules and Regulations. It has been argued on behalf of the first party that since after the Departmental Inquiry vitiated vide Ext. 8, the first party corporation lead evidence to prove its justification by fresh evidence produced in the inquiry before the Tribunal, and this connection 3 witness were examined by the Management and cross-examined by the second party workman, the cheques in the name of Becharadas Jethabhai Patel and J.M. Mistry were also produced as further materials, the fake account paper viz application with nomination paper, pay-in slips depositing of the cheque of 23261 in the name of Becharadas Jethabhai Patel and further withdrawing amount of 23200 were also produced as further materials before this Tribunal with the evidence of one of the policy holders Shri Becharadas Jethabhai Patel denying to file any application for second loan, denying to receive the cheque denying to have opened any Bank account in Union Bank of India and denying to have depositing amount by policy holders for opening Account, and denying to have withdrawing amount of Rs. 23200.00, rather claiming only that he has one account at Aapni Sahkari Bank, Dariyapur and that recovery of the own pass book account with pay-in slip of the concern workman with other objectionable papers and file of different policy holders including of Becharadas Jethabhai Patel and J.M. Mistry from the drawers of the second party workman drawn in punchnama, go to prove allegation of serious misconduct

under the chargesheet. The aforesaid argument advanced by Shri M.S. Sheth, Advocate on behalf of the first party are based on sound footing and are tenable in view of the further materials produced by the first party corporation in the inquiry before this Tribunal.

(17) After considering the evidence oral and documentary, adduced before this Tribunal I am of the considered view that the first party Management has been able to justify its action so, taken against the delinquent workman Shri Pravin T. Trivedi. This issue is accordingly decided in favour of the first party Management.

(18) ISSUE NO. III

On examining the materials on the record and the order of the Disciplinary Authority regarding order of punishment dated 22-11-1987 and 24-11-1987 respectively with respect to the two sets of charge-sheet. Ext. 14 and 15 respectively, this Tribunal is of considered view that the punishment imposed upon the delinquent workman (second party) is in accordance with gravity of the misconduct. As per Ext. 14 the first set of chargesheet misconduct of the delinquent workman has been proved through fresh evidence in inquiry before this Tribunal and also other materials on the record that the delinquent workman though was performing duty of Record Clerk on specified table is having duty of making inward entries in the letters receipt and then to dispatch those papers under register post with A.D. to the concern policy holders after making entries in the dispatch register, but delinquent workman had received the cheque of the Becharadas Jethabhai Patel amounting to Rs. 23261.10 ps prepared by Account Department on sanctioning of the so called loan application of the Becharadas Jethabhai Patel. The delinquent workman was not honest and dutiful in discharge of his duty as Record Clerk though he received the cheque under cheque movement register, but did not dispatch the said cheque to the policy holder Becharadas Jethabhai Patel on his address nor made its entry in the dispatch register and thus proving sufficiently that he with held the said cheque of Becharadas Jethabhai Patel for ulterior motive, evidence of Becharadas Jethabhai Patel go to show that he has never applied for any loan application for second time loan in the year 1987 rather loan had been raise to him under his policy in the year 1984, the seizure of original policy of Becharadas Jethabhai Patel with his so called second loan application were recovered from the drawer of the delinquent workman, when the Police drawn punchnama before the witness and also in presence of the Management Witness Shri S.M. Shah and N.P. Asnani as per their evidence at Ext. 234 and 238. There was no any sense in discharge of duty of the delinquent workman to keep the policy papers and other objectionable documents in his drawers of table, moreover with holding of the cheque of the Becharadas Jethabhai Patel and not dispatching it under register post with A.D.

with out making entry in the dispatch register all go to prove his serious misconduct that by the aforesaid acts he failed to maintain absolute integrity and devotion to duty, also failed to serve the corporation honestly and faithfully and had acted in a manner detrimental to the interest of the corporation and prejudicial to good conduct and his such misdeeds attract violation/breach of Regulation 21 and 24 of the LIC Staff Regulation, 1960, the extract of the LIC, Staff Regulation, 1960 as modified up to 31-01-1983 has been filed on behalf of the first party Corporation marked as Ext. 55. Chapter III deals with conduct discipline and Appeals. Regulation 21 caste liability upon the Staffs of LIC to abide by the regulation. Regulation 24 direct the employees to promote the corporation's interest. That deviation on part of the employee of this Regulation attracts misconduct on their part which if proved, is punishable by the anyone or more of the penalties specified under Regulation 39 (1) which deals with different type of punishment from clause (a) to clause (g) of the aforesaid Staff Regulation, 1960, the delinquent workman for first set of charge with respect to the cheque of Bechardas Jethabhai Patel was punished under clause (d) of Regulation 39 (1) by imposing the penalty of reduction of basic pay to the minimum. He was further imposed penalties under clause (c) for recovery of Rs. 23261. 10 ps. Regulation 39 (2) deals with that no order imposing on an employee any of the penalties specified in clause (b) to (g) of sub-section (1) shall be passed by the Disciplinary Authority without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity to defending himself against such charge or charges and of showing cause against action propose to be taken against him. From the record it appears that the delinquent workman on preliminary inquiry conducted by the officers of LIC as per evidence of S.M. Shah at Ext. 234 was put under suspension and was served with chargesheet asking whether he admits the charge or not and have he denied the charges then to submits his statement of defence within 15 days. The delinquent workman had submitted his statement of defence and Departmental Inquiry was conducted against him in his presence and the Inquiry Officer submitted his inquiry report and that second show cause notice was also issued from the Disciplinary Authority and that punishment was imposed. Though the Domestic Inquiry has been vitiated vide Ext. 8, but the first party corporation has justified its action through inquiry conducted before this tribunal by adducing oral and documentary evidences as fresh materials. On the record, the first set of charge so far it relates to his misconduct connected with policy holder Bechardas Jethabhai Patel, I do not find that the punishment imposed upon him of reduction of basic pay to minimum and for recovery of the amount of the cheque to Rs. 23261 which he had received under cheque movement register but had not dispatch to the said Bechardas Jethabhai Patel under

register post with A.D. and also not making entry in the dispatch register and the strong circumstances that the cheque was deposited in a fictitious account said have been opened in the name of Bechardas Jethabhai Patel in the branch of Union Bank of India, Gandhi Road Ahmedabad whereas there was actual no any account of Bechardas Jethabhai Patel and he in his evidence denying about it, denied about opening any account, denying about filing up any nomination form, denying about receiving the cheque and also denying about withdrawing the amount rather asserting that he has only one account running at Aapni Sahkari Bank, Dariyapur Branch, was also serious misconduct on part of delinquent workman and so, punishment of reduction of basic pay to minimum and also order of recovery of the amount of the cheque imposed on him by the Disciplinary Authority by order dated 22-11-1987 are found to be just and proper in view of the proved misconduct of the delinquent workman. So, the first part of the punishment on prove of the chargesheet at Ext. 14 dated 30-09-1980 do not go to attract this Tribunal to invoke the provision of section 11 (A) of the I.D. Act for any modification in the alleged punishment so, awarded to him by the Disciplinary Authority under regulation 39 (1) (c) & (d).

(19) So far as the second set of charge also dated 30-09-1987 which relates to the misconduct on party of the delinquent workman in not dispatching the two cheques No. 945609 and 945610 dated 24-07-1987 amounting to Rs. 26159 and 18816.40 respectively to the policy holder J. M. Mistry under register post with A.D. and also not entering those cheques in the dispatch register and the circumstances regarding depositing of the said two cheques in the Union Bank of India branch, Mehsana and being credited in the fictitious account of J.M. Mistry, while J.M. Mistry had informed to the corporation that he had never raised any loan in the year 1987 and had only raised loan on his policies in the year 1983 and the factum those cheques were not received by him, again go to prove serious misconduct on part of the delinquent workman that he failed to maintained absolute integrity and devotion to duty and also failed to served the corporation honestly and faithfully and also acted in a manner detrimental to the interest of the corporation and prejudicial to good conduct. His such misconduct were in breach of Regulation 21 and 24 read with Regulation 39 (1) of the LIC of India, Staff Regulation, 1960. The similar type of serious misconduct was also proved under second chargesheet at Ext. 15 so far as it relates to 4 policies of J.M. Mistry and factum of recovery of the policy papers and the policy bound file from the drawers of delinquent workman as per the punchnama go to prove his serious misdeeds. He was not authorized to retained or keep the policy bond papers or any application of any policy holder as part of his duty. So, on prove of the repetition of the serious misconduct under the second chargesheet dated 30-09-1987, as per Ext. 15, Disciplinary Authority also

appears to have justify in imposing the punishment of removal from service which shall not be disqualification for future employment to the delinquent under clause (f). However imposing also punishment under clause (c) as to recovery of amount of the two cheques appears to be excessive because of the fact that the LIC corporation had also filed a Civil Suit RCS No. 3010/88 for recovery of amount of Rs. 50373 including interest against the delinquent workman Pravin T. Trivedi, B.G. Pathak and Union Bank of India branch, Mehsana, impleading them as defendants in the recovery of the amount of two cheques 945609, 945610 dated 24-07-1987, but the suit brought by the LIC against the delinquent and two others for the recovery of amount of two cheques with interest was dismissed as per Judgment and Decree dated 31-07-2000 by the Civil Judge, City Civil Court, Ahmedabad. So, in such view of the matter the imposition of penalty for the recovery of the amount of the two cheques also passed as per order dated 24-11-1987 by the Disciplinary Authority, does not appear to be just and proper rather this part of the punishment appears to be too excessive. Because on of prove of the similar type of serious misconduct of the delinquent workman, disciplinary authority imposed punishment regarding removal from the services under clause (f) then there was no justification in further imposing punishment for recovery of Rs. 44975.40 under Regulation 39 (1) clause (c). However further direction in the punishment order passed by the Disciplinary Authority that period of suspension of Shri Pravin T. Trivedi (delinquent workman) Record Clerk CBO/5/842 Ahmedabad from 14-08-1987 to 24-11-1997 (both dates inclusive of) during the period has not spent on duty also appears to be just and proper in view of imposing the punishment as to removal from the services.

(20) As per discussion and findings made in the fore-going paragraph this Tribunal is of the view that the punishment imposed upon the workman with respect to the two sets of proved charges dated 30-09-1987 vide Ext-14 and 15 are not disproportionate to the gravity of the misconduct accept for such modification by setting aside the punishment dated 24-11-1987 for the recovery of the amount of Rs. 44975.40 ps. This issue is accordingly decided in favour of the first party with setting aside the punishment of recovery of amount by order dated 24-11-1984.

(21) ISSUE NO. I

Such a stand of the first party corporation has no leg to stand, that LIC is not an Industry so, provision of ID Act is not applicable and the Reference is therefore not maintainable. In the catena of decision it has been held that the function of the LIC is a like an Industry and so the provision of ID Act is applicable. During the argument, Learned Advocate appearing for the first party corporation did not press on the point of maintainability of this

Reference. Ext. 232 by amendment in the written statement that LIC is not an Industry so, provision of ID Act is not applicable, but during argument the Learned Counsel for the first party did not press this issue. It is therefore, held that the Reference sent for adjudication by the appropriate Government is maintainable. As the dispute attracts the provisions of ID Act 1947.

(22) ISSUE NO. IV

During the midst of argument a bio-data of the delinquent workman has been put up on behalf of the first party corporation furnished from the office of Senior Divisional Manager showing the service carrier of the delinquent workman as Record Clerk S.R. No. 427654 and his place of posting in city, branch No. 5/842 Ahmedabad DO, his date of joining 22-12-1972, his date of birth 15-06-1949 and his date of superannuation with effect from 01-07-2009. These facts are not disputed on behalf of the second party workman. The delinquent has already reached the age of superannuation. More so, on prove of his serious misconduct resulting in imposing the punishment of reduction of basic pay to minimum and order of recovery of the amount of Rs. 23261.10 for the first chargesheet dated 30-09-1987, as per Ext- 14 and also his punishment of removal from services on prove of the second chargesheet of the same date 30-09-1987 (Ext. 15) do not go to debar him from future employment, completely go to shield the delinquent workman for his any entitlement in this case by way of reinstatement, back-wages with any consequential benefits and continuity of services except to the relief that the Management of LIC cannot recover the amount of two cheques from the delinquent workman, as per punishment order dated 24-11-1987 for the reasons given in the for going paragraph.

(23) In view of the findings given in the fore goings, the following award is passed. The action of the Management of LIC of India imposing the penalty of reduction of basic pay to the minimum and order to recovery of Rs. 23261.10 under Regulation, 39 (1) (c) and (d) of the LIC of India Staff Regulation, 1960 vide punishment order dated 22-11-1987 and the imposition of penalty of removal from the services vide punishment order dated 24-11-1987 under Regulation 39 (1) (f) of the LIC of India Staff Regulation, 1960 to the delinquent workman Shri Pravin T. Trivedi Ex-Record Clerk is justified. But the action of the Management of LIC of India in also imposing penalty to recovery of Rs. 44975 as per Regulation 39 (1) (c) of LIC of India Staff Regulation, 1960 from the delinquent workman is not justified and so, this part of the punishment order is set aside only.

The Reference is rejected on contest. Parties to bear cost. This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 14 जून, 2011

AWARD

Passed on June 7, 2011

क्र. आ. 1824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1153/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/134/2000-आई अर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1153/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 14-6-2011.

[No. L-12012/134/2000-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

PRESENT:

Sri A. K. Rastogi, Presiding Officer

Case LD. No. 1153/2005

Registered on 23-9-2005

Sh. Sanjay Mathews, S/o Sh. Santh Mathews,
H. No. 701, Sector-55, Ambedkar Colony,
Chandigarh-160001 ... Applicant

Versus

Union Bank of India, The Chief Manager,
UBI, Sector 21-C, Chandigarh ... Respondent

APPEARANCES:

For the workman : Sri Raj Kaushik, Advocate

For the Management : Sri B. B. Bagga and
V. K. Diwan, Advocates

Central Government vide Order No. L-12012/134/2000-IR (B-II) dated 24-11-2000, by exercising its powers under Section 10, Sub-section (1), Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following Industrial Dispute for adjudication to this Tribunal :

“Whether the action of the Chief Manager, Union Bank of India, Sector 21-C, Chandigarh in terminating the services of Sh. Sanjay Mathews S/o Santh Mathews w.e.f. 24-9-1999 is just and legal? If not, what relief the workman is entitled to?”

1. The case of the workman is that he had been appointed as Driver-cum-Peon in July 1995 by the respondent bank to work at branch office of the bank at Sector 21-C, Chandigarh to drive the Car No. CH-01-M-9084 for bank work as well as to carry the Chief Manager from his residence to the bank and back. In addition to that he was deputed at times to drive bank cars and to carry cash. He was also deputed to submit clearing cheques from different branches of the bank for further presentation in the clearing house. In the event of Peon being on leave he also used to perform the duty of opening and closing of the bank. He was paid fixed wages at the rate Rs. 2800 per month and in view of his low salary he was being compensated by paying the bills from petty cash. He had been employed after an interview and skill test of driving and was continuing upto September 1999. His services were terminated on 24-9-1999 as he had refused to carry Rs. 50 lacs cash without security guard a day earlier. His services were terminated without following the procedure provided under Section 25F of the Act. He has claimed his reinstatement with full back wages and all consequential benefits.

2. The claim was contested by the management. It was denied that the workman was ever appointed by the respondent in any capacity and there was any relationship of employer and employee between the respondent and the workman. It has been stated that workman was the personal driver of the Bank Officers Sh. H. B. Chawla, Sh. K. Selvaraj and Sh. Anil Kapoor in their personal capacities during their posting at Sector 21 branch of the respondent as branch Heads. The said officers were provided car by the bank for their own use and they were only entitled to perquisites in the nature of reimbursement of same expenses within the prescribed limit incurred by them in connection with availing any personal service of a driver. The performance of work by the workman was entirely at the personal disposal of the concerned Branch Manager without superintendence and control of the respondent-bank. It has been also contended that any receipt by a workman of any paltry/petty payment during his tenure as personal driver of some officers of the bank

does not make the workman an employee of the bank. The workman was never appointed nor was he ever interviewed or required to undergo any skill test. It was denied that the workman remained in the continuous service of the bank from July 1995 to September 1999 and his services were terminated by the bank.

3. Workman filed a reply of the written statement to the respondent-bank. He reiterated that there was an employer-employee relationship between the respondent and himself. He further stated that besides his duties as personal driver he was also performing the duties of taking and bringing cash from branch to extension counter and such duties may be allotted to the bank employee only. As per an agreement between the banks and unions, a personal driver performing the duty of carrying cash from one branch to another or from branch to extension counter and vice-versa is to be considered as driver of the bank. The workman was performing duties of messenger also for which he was being paid wages from petty expenses. A branch Manager is not authorized to take bank's work from his personal driver and get reimbursed any amount, as mentioned in the written statement. Cash cannot be entrusted to a personal servant of a branch Manager.

4. From the pleadings of the parties following issues arise for consideration :

1. Whether the workman was in the employment of the bank ?
2. Whether the services of the workman were terminated by the management ? If so whether such termination was legal and justified ?
3. To what relief, if any, is the workman entitled ?

5. In support of his case workman filed his affidavit and on his asking the management filed petty cash statement from January 1997 to December 1999, petty cash vouchers for the corresponding period, copy of logbook from the years 1997 to 1999 and cash remittance register (inward and outward). These documents are marked as Exhibit W2 to Exhibit W227.

Management-respondent on the other hand relied on the evidence of Sh. Ashok Gupta, Chief Manager of the Sector 21-C, Chandigarh Branch of the Bank. Sh. Ravi Khanna, Senior Manager, Personnel Regional Office of the Bank, Sri H. B. Chawla the then Branch Head/Officiating Chief Manager of the Sector 21-C, Chandigarh Branch and Sh. Anil Kapoor the then Chief Manager of the said Branch. Management also relied on certain documents.

I have heard the learned counsel for the management. The workman who had been represented by his counsel on 30-3-2010 when the case was taken up, after its transfer from CGIT-cum-Labour Court-I, Chandigarh, did not turn up, thereafter and his counsel also did not appear. They

failed to appear even after a notice sent to workman by registered post on 16-8-2010. I have perused the record carefully. My findings on various issues are as follows :

FINDINGS

6. Issue No. 1

It is needless to say that when a person claims a relationship of employer and employee between the management and himself, the burden is on him to prove the same. The workman in his affidavit has stated that he had been appointed after following the procedure laid down by the bank but appointment letter had not been issued to him. He has named various duties performed by him and has also stated that a certificate about his being an employee of the bank had been issued in connection of the transfer of his gas connection. He has also stated that he continuously served from July 1995 to September 1999 and has completed more than 240 days in 12 calendar months preceding the date of his termination. In his cross-examination he, however, has admitted that he had not received any letter by employment exchange and no appointment letter or interview letter had been issued to him. It was also admitted by him that he did not receive any communication for his medical examination and he was not issued any uniform or medical card by the bank. Against it he admitted that he had joined as personal driver in July 1995 and he remained personal driver for more than 4 years.

7. Sh. Ashok Gupta, Chief Manager of the concerned branch at the time of filing his affidavit has stated that there is no employee bearing the name of workman on the muster/attendance roll and salary records of the bank. The LFC facility, medical aid facility and leave record of the employee at the branch do not disclose any such employee at the concerned branch of the bank. The workman was never appointed in the services of the bank.

8. Sh. Ravi Khanna was the Senior Manager Personnel at Regional Office, Chandigarh from June 1992 to July 1998 and is reposted in the same office in the same capacity since May 2001 at the time of filing his affidavit. He has stated in his affidavit that the name of the workman never appeared in the man power records of the bank from 1st July, 1995 to 30th September, 1999. Uniform record of the bank shows that he was never issued any uniform by the bank. His name does not figure in the leave record also and he was never interviewed, selected, recruited or appointed by respondent-bank.

9. Sh. Harbhajan Chawla was the branch Head/Officiating Chief Manager of Sector 21-C, Chandigarh branch from June 1994 to April 1998. He stated that during his posting, he had been provided the facility of car in 1995 and workman was personally known to him had been engaged by him as personal driver in the month of December 1995 without undertaking any recruitment

process and workman was never appointed by the respondent-bank in his services. He was at the personal disposal of the deponent.

10. Sh. Anil Kapoor was the Chief Manager of the concerned branch from November 1998 to July 2000. He stated that workman had been engaged by him as his personal driver and the deponent was entitled to use car of the bank for official and personal use. He was also entitled for the reimbursement of salary of personal driver. And if on any particular occasion the services of the workman were utilized by the deponent for any casual work the deponent ensured that due compensation was paid to workman. In his affidavit he has referred Chapter IV of the Book of Instructions of the bank (Annexure R/4/2) according to which petty expenses are incurred in connection with certain transactions which clearly pertain to utilization of services by the bank of the person, not employed by the bank, or for purchase of some articles or materials as per the requirements of the bank. He has further stated that the bank does not exercise any control over the personal driver engaged by officers and such drivers are not subject to any rules of attendance, discipline, service conditions under the Bi-partite settlement/Awards. In his cross-examination he admitted that the car was being used for carrying cash from one branch to another. He admitted that the cash can be handled by an employee of the bank only but it was not clarified from him by the workman-counsel that the cash was ever carried in a car driven by the workman. Against it, it is clear from his statement that the cash is carried in a taxi.

11. I agree with the learned counsel for the management that there is nothing on the record to show that the workman was ever recruited and appointed by the respondent-bank that he was on the pay roll of the respondent and was subject to disciplinary control of the bank. Against it, it is clear from the management evidence that the workman had been engaged as personal driver by Sh. H. B. Chawla and thereafter by Sh. Anil Kapoor.

12. As the Hon'ble Supreme Court has held in the employers in relation to Punjab National Bank Vs. Ghulam Dastagir AIR 1978 Supreme Court 481 a personal driver of Area Manager of a Nationalized Bank is not a person employed by the bank. It is therefore clear that the workman was not in the employment of a bank. Issue No. 1 is decided against the workman.

13. Issue No. 2

Since the workman was not in the employment of the bank hence, the question of termination of his services by the bank does not arise. Neither he was appointed by the bank nor his services were terminated by the bank. Issue No. 2 is accordingly, decided against the workman.

14. Issue No. 3

From the above discussion it is clear that the workman was not in the employment of the bank and his

services were not terminated by the bank. The workman is not entitled to any relief.

The reference is accordingly, answered against the workman. Two copies of the Award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 14 जून, 2011

का. आ. 1825.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचात (संदर्भ संख्या 05/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/85/2009-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the industrial dispute between the management of Syndicate Bank and their workman which was received by the Central Government on 14-6-2011.

[No. L-12011/85/2009-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer

(Monday the 30 day of May, 2011)

L.D. 05/2010

Union : The General Secretary,
National Confederation of Bank
Deposit Collectors,
2/1296A, P.O. Karaparamba-673 010
Kozhikode

By Adv. Shri Ashok B. Shenoy

Management : The General Manager (H.R.),
Syndicate Bank Head Office,
Manipal, Karnataka - 576 104

By Adv. Shri M. P. Ashok Kumar

This case coming up for final hearing on 26-5-2011 and this Tribunal-cum-Labour Court on 30-5-2011 passed the following :

AWARD

The management bank introduced hand held electronic collection device for the use of pigmy agents working as deposit collectors with the launching of a new deposit scheme "Pigmy Plus 2007". As they were required to pay Rs. 300 per mensem as rent union raised the dispute which led to this reference under Section 10 (1) (d) of the Industrial Disputes Act, 1947.

(2) The reference is :

"Whether the action of the management of Syndicate Bank in charging monthly rent towards the usage of the hand held electronic device by the pigmy agents is fair and justifiable ? To what relief they are entitled ?"

(3) The management bank is running two pigmy deposit schemes, "Pigmy 1928" Scheme and the "Pigmy Plus 2007" Scheme. Pigmy agents were engaged under both the schemes for canvassing accounts and collecting contributions from the depositors. It is with the introduction of the "Pigmy Plus 2007 Scheme" the pigmy agents were required to use the hand held electronic device for making collections. As per the scheme the pigmy agents making collections under 1928 scheme were given the option either to use the pigmy collection cards or the electronic handled device for collection.

(4) According to the union the action of the management in imposing monthly rent for the hand held electronic collection machine is illegal, unfair and unjust. It was unilaterally imposed by the bank and is against the terms and conditions of service applicable to deposit collectors. They are deprived of enjoyment of the existing minimal wages payable to them by the management. It is against the terms of the Award of the Industrial Tribunal, Hyderabad in I.D. 14 of 1980 which was upheld by the Hon'ble Supreme Court of India. It is also void as its implementation was in violation of Section 9A of the Industrial Disputes Act, 1947. It is discriminatory since the workmen in other categories and employees in the services of the management are being provided with the necessary tools and machines for their work by the bank without imposing any such burden on them.

(5) In the written statement the management would contend that the pigmy agents are not regular employees of the bank as they were not appointed in accordance with the Banking Regulation Act, 1949 and they are also not workmen coming within the purview of the Industrial Disputes Act, 1947. They are working on contract basis and are receiving commission on pro-rata basis for the amounts collected by them. The use of electronic hand

held machine is an integral part of Pigmy Plus 2007 Scheme and all pigmy agents making collections under that scheme have given their consent to use the device in the agreement executed prior to their engagement. The pigmy agents making collections under Pigmy 1928 Scheme can use either the Pigmy Collection Cards or the Electronic Collection Device for accounting the collections. As it is not made compulsory for them to use the electronic device there is no change in the condition of service and hence S.9A of the Industrial Disputes Act is not applicable. In 2008-09 there was an incentive of providing hand-held electronic machine free of cost and without any liability to pay rent to the Pigmy Agents whose average monthly collections during the year ending on 31-12-2008 was Rs. 5,00,000 and above in Metro/Port Town/ Urban areas and Rs. 2,00,000 and above in rural/semi-urban areas.

(6) In the replication filed by the union, after denying the contentions in the written statement, it is asserted that the pigmy agents are workmen coming within the purview of definition of workmen in Section 2(s) of the Industrial Disputes Act, 1947. It is further alleged that pigmy agents employed by the management prior to 1-3-2007 have not given consent for the use of the electronic hand held machines. They were compelled to use the machine with the burden of payment of monthly rent. Agreements were forcefully obtained by the management from the workmen with regard to the use of the hand held electronic machine. Waiver of monthly rent for the hand held device to some of the deposit collectors is illegal, unjust and discriminatory and is violative of Section 9A of the Industrial Disputes Act, 1947.

(7) Both parties adduced evidence, oral and documentary, and it consists of the depositions of WW1, MW1, Exts W1 to W8 and M1 to M9.

(8) The points for determination are :

1. Whether the pigmy agents are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 ?
2. Whether there is change of condition of service by the introduction of hand held electronic device making it in violation of Section 9A of the Industrial Disputes Act, 1947 ?
3. Whether the action of the management bank in charging monthly rent towards the usage of hand held electronic device by the pigmy agents is fair and justifiable and if not, what relief they are entitled to ?

(9) Point No. 1 : A scheme by name "Pigmy Deposit Scheme" was initially introduced by the bank in the year 1928. The deposit collectors called pigmy agents were engaged on contract basis as per the terms and conditions as provided in the agreement executed by them. It was on

1-3-2007 "Pigmy Plus 2007" scheme was introduced by the management making it mandatory to use the hand held electronic device. According to the union pigmy agents are workmen coming within the purview of the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947. It is disputed by the management bank by contending that the relationship between the bank and the pigmy agents is as between a principal and agent on the basis of an agency agreement and that they receive commission on pro-rata basis. The contention put forward by the management bank is not sustainable in view of the decision reported in *Indian Banks' Association v. Workmen of Syndicate Bank and Others* (2001) 3 Supreme Court Cases 36. Therein it was held that pigmy agents are not regular employees but are workers within the meaning of the term 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947, the banks have control over them in their work and are accountable to the bank and that the commission paid to them is nothing else but wages under Section 2(rr) of the Industrial Disputes Act. Hence, without any hesitation it can be held that the pigmy agents are workmen as defined under Section 2(s) of the Industrial Disputes Act.

(10) Point Nos. 2 & 3 : Pigmy agents were engaged on contract basis on the terms and conditions entered into in that behalf under the "Pigmy Deposit Scheme". Ext. W7 is the copy of an order dated 5th August, 1978 appointing one Radhakrishnan Nair as pigmy agent under that scheme. The copy of the agreement executed by him pursuant to his appointment is Ext. W8. Ext. M1 is the copy of an agreement executed by one P. Krishnan on 9-11-1979 to join as pigmy agent of the management bank. From Exts. W7, W8 and M1 it can be seen that the conditions of service of pigmy agents was on contractual basis. Either of the parties has not cared to produce the copy of the scheme in this case. WW1 has admitted during his cross-examination that the pigmy agents were engaged on the basis of agreement entered into by them with the bank. They are not regular employees of the bank and cannot claim their service benefits. They cannot also be equated with the workmen in other categories.

(11) Handheld electronic device for the collection of deposits was introduced by the management bank as an integral part of the implementation of a new scheme called "Pigmy Plus 2007 Scheme". The commencement of the scheme was on 1-3-2007. It was made mandatory to use the handheld electronic device for collection of deposits and the same is evidenced by Ext. M2, the copy of the circular dated 26-8-2006 of the management bank. The relevant portion in Ext. M2 is extracted below :

"In order to take advantage of Technology, it is decided to use machines for collection of Pigmy Deposits. The introduction of collecting device shall enhance the productivity of the branches as it will reduce the work of the daily checking of B-6, tallying

Pigmy suspense, manual entries to individual accounts, tallying Pigmy deposit etc. (as the entries shall be made directly from the machine to the account every day). The cards, B-6 ledger, as well as processes such as card entries, issue and tallying of cards etc. will also be dispensed with".

(12) The condition for payment of rent for the electronic collection device is included in the circular dated 1-3-2007 of the management bank, copy of which is marked as Ext. M3. The relevant portion reads as follows :

"The agent shall be liable to pay a rental for the use of the Machine. The rental at present is fixed as Rs. 300 per mensum. The same may be changed by the Bank at its sole discretion by informing the Agent at least a month in advance".

(13) Ext. M7 is a copy of agreement executed by a pigmy agent under that scheme on 26-3-2007 and from which it can be seen that the use of the machine and the liability to pay rent @ Rs. 300 per mensum which can be changed by the bank at its discretion is made as part of the terms of the agreement to be executed by the pigmy agent under the new scheme.

(14) The only argument advanced by the learned counsel for the union is that there is change of condition of service of the pigmy agents by the introduction of the hand held electronic device and hence it was necessary to have issuance of notice under Section 9A of the Industrial Disputes Act.

(15) With the introduction of the new scheme the earlier pigmy deposit scheme was given the name "Pigmy 1928 Deposit Scheme" and the same is evidenced by Exts. M2 and M3. It is not in dispute that the pigmy agents under that scheme was given an option either to use the pigmy collection cards or the electronic hand held device for accounting the collections. It is undisputed that all the pigmy agents coming under "Pigmy Plus 2007 Scheme" executed agreements agreeing to use the electronic hand held device by making payment of rent @ Rs. 300 per mensum which can be subsequently changed by the management bank at its discretion. The terms and conditions with regard to the pigmy agents under the two schemes are different and hence the same to be considered separately.

(16) As far as the pigmy agents engaged under the Pigmy Plus 2007 Scheme are concerned they have consented to by executing agreement to the usage of hand held electronic device by accepting the liability to pay rent. In their case there cannot be any change of condition of service making it necessary to issue notice under Section 9A of the Industrial Disputes Act, 1947. In the replication it is expressly admitted that they had executed agreement after the introduction of the new scheme. Therein challenge is made mainly with regard to the existing pigmy

agents at the time of the commencement of the Pigmy Plus 2007 Scheme on 1-3-2007. As regards those pigmy agents it can be said that there is a change of condition of service which comes under items 1 and 8 of Schedule IV of the Industrial Disputes Act inviting the issuance of notice under Section 9A of the Industrial Disputes Act. Since they are being given the option either to use the collection cards or the electronic hand held machine there cannot be a change of service condition with regard to the employees who exercises the option of usage of hand held electronic device by giving free consent. Though there is pleading as to compulsion for execution of agreement by those pigmy agents for the use of hand held electronic device the same is not substantiated by adducing any reliable evidence. If there was any compulsion union/workmen could have resorted to the appropriate remedies.

(17) The learned counsel for the management has argued that notice under Section 9A of the Industrial Disputes Act is not required in a case where the employer will change the service conditions of employees with an option to them to opt the existing service conditions. Reliance was placed by him on the decision reported in Tamilnadu Electricity Workers' Federation and another v. Madras State Electricity Board reported in 1964-II-L.L.J. 392. Therein it was held :

"Where a change has been effected by imposition, it may be sufficient that the concerned workmen think is prejudicial, whether it be truly so or otherwise. But, where the change has been effected by consent, as between certain workmen and the employer, upon an offer by the employer and the acceptance of the terms by the concerned workmen, and the rest of the workmen, in industry are unaffected because the status quo prevails, the organizations of labour cannot step in and presume to dictate, by telling the workmen that the choice was erroneous, and that they are ignorant of their true welfare".

(18) The pigmy agent under the earlier scheme has got the discretion either to continue to use the daily collection cards or to use the electronic hand held device. If such an option was not given it would have been necessary to have notice under Section 9A for the introduction of the use of electronic hand held device.

(19) As far as the pigmy agents engaged under the Pigmy Plus 2007 Scheme they have agreed to use the electronic hand held machine by payment of rent as per the terms of the agreement executed by them hence there is no need to have any notice under Section 9A of the ID Act as there cannot be any change of conditions of service. But in the case of the pigmy agents under the earlier scheme it would have been necessary if the option was not given to them.

In view of the aspects discussed above, it can be held that the action of the management of Syndicate Bank in charging monthly rent towards the usage of the electronic device by the pigmy agents is fair and justifiable.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of May, 2011.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Union :

WW1 — V. Akbar, General Secretary of the union.

Witness for the Management :

MW1 — K. Vijayachandran, Manager (Accounts Section), Regional Office, Ernakulam.

Exhibits for the Union :

- W1 — Photocopy of the charter of demands dated 26-5-2008 submitted by union to the Assistant Labour Commissioner (C), Kochi.
- W2 — Photocopy of para-wise comments dated nil submitted by management to the ALC (C), Kochi
- W3 — Photocopy of the reply letter dated 8-8-2000 submitted by union to the ALC (C), Kochi.
- W4 — Photocopy of the written comments dated 16-1-2009 submitted by management to the ALC (C), Kochi.
- W5 — Photocopy of the reply letter dated 13-2-2009 submitted by union to the ALC (C), Kochi.
- W6 — Photocopy of the circular No. 187/2006-BC-P&D dated 26-8-2006 issued by the management.
- W7 — Photocopy of the appointment order No. 2648-808-250-GEN dated 5-8-1978 issued by the management to Mr. M. K. Radhakrishnan Nair, Deposit Collector.
- W8 — Photocopy of the agreement dated 5-8-1978 obtained from Sri M. K. Radhakrishnan Nair, Deposit Collector.

Exhibits for the Management :

- Ext. M1 — Photocopy of the agreement dated 9-11-1979 entered into between the management and one P. Krishnan, Deposit Collector.
- Ext. M2 — Photocopy of the Circular No. 187-2006-BC-P&D dated 26-8-2006 issued by the management.
- Ext. M3 — Photocopy of the Circular No. 063-2007-BC-P&D-16 dated 1-3-2007 issued by the management.
- Ext. M4 — Photocopy of the Circular No. 314-2008-BC-P&D-111 dated 22-12-2008 issued by the management.
- Ext. M5 — Photocopy of the Circular No. 070-2009-BC-P&D-30 dated 25-3-2009 issued by the management.
- Ext. M6 — Photocopy of the Circular No. 093-2009-BC-P&D-40 dated 20-4-2009 issued by the management.
- Ext. M7 — Photocopy of the Agreement dated 26-3-2007 entered into between the Management and one Sri Suresh N.R., Deposit Collector.
- Ext. M8 — Photocopy of the request dated 10-3-2010 submitted by Sri Roy L. Thomas, Deposit Collector.
- Ext. M9 — Photocopy of the Circular No. 004-2008-BC-P&D-03 dated 5-1-2008 issued by the management.

नई दिल्ली, 14 जून, 2011

क्र. आ. 1826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 34/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 14-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/52/2005-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the

industrial dispute between the management of Central Bank of India and their workmen which was received by the Central Government on 14-6-2011.

[No. L-12011/52/2005-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA**

Reference No. 34 of 2005

PARTIES :

Employers in relation to the management of Central Bank of India

AND

Their workmen.

PRESENT :

MR. JUSTICE MANIK MOHAN SARKAR,
Presiding Officer

APPEARANCES :

On behalf of the Management : Mr. T. K. Saha, Manager of the Bank.

On behalf of the Workmen : Mr. M. Bhunia, Executive Committee Member of the workmen union.

STATE : West Bengal.

INDUSTRY : Banking

Dated 9th June, 2011

AWARD

By Order No. L-12011/52/2005-IR(B-II) dated 9-8-2005 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the demand made by Shri Panchu Mondal and others (as per list attached) for regularization of their service by the management of Central Bank of India at Kolkata is legal and justified ? If not, what relief are the workmen concerned entitled to ?"

LIST OF THE WORKMEN

L-12011/52/2005-IR(B-II)

Sl. No.	Name	Posted at Office/ Branch canteen
(1)	(2)	(3)
1.	Shri Panchu Mondal	Camac Street Branch
2.	Shri Ram Chandra Das	Camac Street Branch

(1)	(2)	(3)
3.	Shri Himangshu Jana	Howrah Branch
4.	Shri Narayan Chandra Kar	Rabindra Sarani Branch
5.	Shri Gopal Chandra Marik	Rabindra Sarani Branch
6.	Shri Nandalal Shaw	Rabindra Sarani Branch
7.	Shri Sukumar Kamila	New Market Branch
8.	Shri Himangshu Sekhar Das	New Market Branch
9.	Shri Rabindra Nath Maity	Park Street Branch
10.	Shri Sushil Ghosh	Park Street Branch

2. The story of the workmen union in its written statement of claim is that the management Bank (Central Bank of India) has got many canteen staff working in its Zonal Office, Kolkata at 33, N. S. Road (Third Floor), Kolkata and other branches/offices under the control of the Zonal Office and the said canteens are located within the premises of the respective branches and offices. After establishment of the canteen in the Bank premises, the management Bank has created Canteen Committee consisting of members from among the Bank employees for looking after the matters of canteen during office working hours and the Chairman is engaged in the committee from the management cadre of the Bank. Since long past, the management Bank provides canteen facility making the same as service condition of Bank employees by usage and custom and the running of canteen has become identical to the running of the business of the Bank being an obligation on the part of the Bank management. Management Bank controls the canteens by way of granting subsidy and also by providing space, furniture, chairs and tables, electricity, electrical oven, coke oven, cooking gas, crockeries and utensils etc. for smooth running of the canteen and subsidies are primarily for payment of wages to the canteen staff. The canteen workers are denied with their legitimate right as enjoyed by the other Bank staff of Class-IV and to conceal the relationship, these canteen workers were never issued with any appointment letter nor they were ever formally recognized or treated as Class-IV staff of the Bank. Canteen workers' services were never regularized with minimum salary payable to the regular employees of the Bank and, instead, they were being treated as irregular employees without any status and benefits. Having received no positive response from the Bank in respect of their regularization, the workmen union requested the management to pay some interim relief which the Bank actually assured to consider through letter issued to the

union, but subsequently the Bank stood back and did not pay such relief. Majority of the canteen staff are getting Rs. 1000 to Rs. 1500 per month only even after working in the canteen for long 12 to 36 years in some cases and that is an indifferent treatment from the management Bank which pays Rs. 4046 as monthly wages to the regular Class-IV staff of the Bank and they are also being provided with 45 days leave in a year, medical benefits, hospitalization charges for self and dependant, leave fare benefit etc. apart from getting bonus. Canteen workers thus, being denied of the minimum requirements year after year, filed a Writ Application being C.O. No. 4760 (W) of 1993 before the Hon'ble High Court at Calcutta which was subsequently disposed of by an order dated 31st January, 2002 with an advice of seeking redress by the workmen under the provisions of the Industrial Disputes Act, 1947 and thereafter the dispute was raised before the Regional Labour Commissioner (Central), Kolkata which having failed to settle the matter, referred it to the government of India and subsequently this Tribunal received the dispute by way of a reference from the Government of India.

3. The management Bank has submitted through its written statement of reply that canteen boys are engaged for work under the supervision and control of the canteen committee set up with regular employees of the Bank as part of welfare activities. The workmen under this reference, being employed in the canteen of Bank's different branches and office had demanded payment of wages at par with the grade and scale of pay of the regular sub-staff of the Bank with the plea that the work done by the canteen workers are similar to the other regular sub-staff of the Bank and also demanded other treatments equivalent to the regular sub-staff. The management did not accede to their demand. Being refused the workmen concerned preferred a writ under Article 226 of the Constitution of India before the Hon'ble High Court, Kolkata wherein they were advised to seek remedy under the Industrial Disputes Act, 1947 and thereafter the dispute was raised before the Regional Labour Commissioner (Central), Kolkata. The management Bank has challenged the present reference as being invalid, illegal, null and void and having no effect and also claimed that the written statement of the workmen is devoid of any merit and thoroughly misconceived. It is claimed that the staff canteen is being run, maintained and managed by canteen committee constituted on pro-rata membership of the union by issuing nomination from various employees/officers Associations existing in the management Bank, having minimum membership of 50 members and the Bank has prescribed the procedure of selection of the members from among the employee union and association and also confirmed that the Chairman of the committee is nominated from among its senior officers. The Bank employees who are nominated as members of the canteen committee were getting salary from the Bank towards discharge of their

duties in the banking business and not for attending the work of canteen during working hours which was treated as purely of voluntary nature and so the absence there do not attract any disciplinary action against the staff concerned. Further, the status of canteen run by the canteen committee is non-statutory and non-recognized and the employees of such canteen are not under the supervision and control of the Bank and they are recruited or appointed by the canteen committee for the works of the canteen and they are not governed by any rule framed by the Bank. The management has also submitted that no obligation is there on the part of the Bank either statutory, or otherwise, to run a canteen and it is providing canteen with payment of subsidy as part of the welfare scheme of the Bank. Canteen committee maintains accounts of the canteen and get the same duly audited. The Bank is in no way taking any disciplinary action against any canteen employee. It is further stated that recruitment of subordinate staff of the Bank, is done as per statutory rules framed for the said purpose by way of giving proper advertisement, test or interview of the candidates sponsored by the Employment Exchange etc. It is fact that the management Bank was to give furniture, dining tables and chairs, curtains, utensils, crockery etc. as welfare measure for use in the canteen and also the accommodation has been provide in the Bank premises, but the canteen committee is responsible to provide the raw materials for preparation of food in the canteen and the Bank does not exercise any supervision or control over the canteen or the persons engaged therein and the employees in the canteen perform their duties under the direct supervision and control of the canteen committee and the terms and condition, payment of salary/emoluments of the canteen workers and element of their duties, are done by the canteen committee. Management Bank has further stated that for the sake of harmonious relationship, at the request of the workmen union, the subsidy amount has been increased for payment of salary at enhanced rate to the employees of the canteen committee. The management has concluded their written statement by way of denial of the case of the workmen union para-wise in their written statement and claimed that the same is wholly devoid of merits, motivated, misconceived and not supported by law and so prayed for rejection of the claim made by the workmen.

4. The rejoinder filed on behalf of the workmen is almost the repetition of the story made in the statement of claim and also by way of denial of the story of the management Bank in its written statement and so no further repetition is needed here by discussing the contents of the rejoinder.

5. In the present reference the workman, Shri Panchu Mondal along with others has claimed for regularization of their services under the management of Central Bank of India, Kolkata. Fact remains that these workmen are

working in the canteens located with the premises of the management Bank at different branches and offices and there is no denial that these workmen were engaged by the canteen committee of different branches.

6. Before going to the other areas and avenues for discussion about the justification of the demand made by these workmen for regularization, the oral statement of one of the workmen, namely, Ram Chandra Das as WW-01 is to be looked into. In course of his examination in chief, he has stated that he was working as a Canteen boy in the Camac Street Branch of the Central Bank of India and was getting Rs. 1350 per month as wages which has been increased to Rs. 1600 per month and he was working there since July, 1987. This witness has stated about his companion worker by name Panchu Mondal and he was working there since 1978. He has further stated that there is a canteen committee in the Bank which used to manage the affairs of the canteen and usually the Branch Manager or the Accountant of the concerned Branch used to act as the Chairman of the canteen committee in terms of the circular of the Bank and that circular has been made Ext. W-05 in this reference. He has further stated that he used to get wages from the canteen committee which used to pay the same from the subsidy meant for the staff of the Bank. During cross-examination this witness has further confirmed that the canteen committee appointed him though he could not enlighten the way by which the sub-staff of the Bank were appointed. He has further stated that the canteen committee used to look after their work and also used to grant leave to them and disciplinary action, if any, of the canteen staff was used to be taken up by the canteen committee. This witness has confirmed that the canteen workers/boys did not use to put signature on any attendance register meant for the Bank Staff.

7. So, from recapitulation of the oral statement of the above witness concerned, it is revealed that the workmen of the present reference are engaged or appointed by the canteen committee and not by the Bank where the canteen was being run. It is also forthcoming that the canteen committee is the authority to make payment of their wages and also to look after their day-to-day work. So, question may crop up here as to why these workers not practically appointed by the management Bank claims regularization of their services under the Bank.

8. In this connection, Mr. Bhunia, the authorized representative of the workmen submitted that the canteen was a product through circular of the management Bank in which the provision of canteen for supply of food articles to the Bank Staff has been provided and such canteens were started within the Bank premises where the Bank provides space for the said canteen and provides kitchen room, food items, supply counter, dining hall and all other infrastructure like electric oven, cooking gas, utensils, furniture, refrigerator, water cooler etc. were also provided

by the Bank and also the charges for consumption of electricity within the canteen premises and cost of fuel were also being borne by the Bank. In respect of payment of subsidy, Mr. Bhunia submitted that the canteen subsidy is paid to each and every Bank employee on per-capita basis and it had become a component of pay of the Bank employees. It has also been stated that canteen has become the service condition of the Bank employees and for that reason the subsidy used to be paid by the Bank was increased from time to time like other allowances and that is by way of different Bank circulars from time to time and such Bank circulars have been provided in the present reference as exhibits W-05 to W-08 and W-09. Mr. Bhunia has further referred to the infrastructure of the canteen committee and he claimed that the said committee was created by the Bank and the management of the Bank took active role in the matter of formation of the canteen committee from the Bank employees and it is headed by the Branch Manager of the Branch and the Bank management takes active role in the matter of managing and running the canteen. It is further stated by Mr. Bhunia that the Bank management also controls and monitor the subsidy paid through canteen committee and the canteen subsidy being the Bank's fund is being audited by the internal audit of the Bank and claimed that the management takes positive role of reopening the canteen at the earliest in case there is a break in the canteen service. It has further been argued that the Branch Manager is the disciplinary authority in case of the canteen staff and thereby it is evident that the Bank has active and pervasive control in the matter of running the canteen and the canteen is part and parcel of the establishment of the management Bank.

9. Mr. Bhunia has further argued that the Bank management has raised an artificial screen in between the Bank and the canteen employees by speaking about canteen committee as being the establishment managing the affairs of the canteen and if the artificial screen is lifted, it would be seen that there is master and servant relationship or employer-employee relationship directly in between the Bank management and the canteen employees. It is further argued that in the management Bank there is no system of third party as contractor for running the canteen, but it is actually run by the Bank officers and award staff constituted as canteen committee from among the Bank employees. Mr. Bhunia further submitted that the union side disagreed with the claim of the management that the canteen has been established as for welfare service to the employees posted there in the management Bank and rather claimed that this canteen facility was a statutory organization and it is obligastory on the part of the management to run and maintain such canteen.

10. Before deciding as to whether these canteen workers can claim their regularization under the management Bank, it is to be seen whether any relation of

employer-employee exists in between these two sides and thereafter it is to be seen the role of the management Bank in relation to the canteen committee. Under the Factories Act, provision of canteen in the factory premises is provided in the Statute itself and thereby the factory management becomes directly related to the canteen workers working in the canteen though the said canteen might be managed by a canteen committee formed by the factory management. In such case, the existence of canteen committee is in the style of statutory organization and there the factory management cannot escape its liability to look into affairs of the canteen workers and if rule permits then to consider the question of their regularization. But, in the case of Bank canteen, the situation is otherwise as the creation of such canteen committee is not provided either by any Statute or by any contractual obligation in between the Bank management and its employees so that the canteen committee on establishment by the management Bank is having a statutory character to make the management Bank liable to all the affairs of the canteen. In this connection a reliance may be made to the decision reported in (2000) 5 SCC 531 wherein it has been stated :

"Therefore, it has to be held that the employees of the canteen which are run at various branches by the L.I.C. as per welfare scheme framed by S.B.I. would not become employees of the Bank as the Bank is not having statutory control or obligation to run such canteen."

In another decision reported in (2006) 1 SCC 567 (State of Karnataka v. K.G.S.D. Canteen Welfare Association) it has been held by the Hon'ble Apex Court that :

"Industrial Adjudicator is required to apply the relevant tests laid down by the Supreme Court, in the facts situation obtaining therein. Most of the cases of the Supreme Court on the issue of when canteen employees would be employees of the principal employer for all intent and purport have been considered by the Supreme Court in the peculiar facts and circumstances obtaining therein and, thus, it is even not proper for the Industrial Adjudicator to apply ratio of one decision to the exclusion of another without considering the facts and circumstances involved therein.

The question as to whether employees of the canteen are employees of the State or whether their services should be directed to be regularized or not would be dependant upon the issues as to whether the canteens are required to be made in terms of the provisions of Statute or otherwise. The law, however, does not appear to be settled as to whether even in a case where the employer is required to run and maintain a canteen in terms of the provision of Statute, the employees of the canteen would

automatically be held to be employees of the principal employer and with all intent and purport and not for the purpose of Factories Act alone. Since this question is not in issue, no observation shall be made in this regard. However, in a case of the present nature even an Industrial Adjudicator, may be, have some difficulty in coming to the conclusion that employees of a canteen for all intent and purport are employees of the principal employer. In any case, in the present case, the State has no statutory compulsion to run and maintain any canteen for its employees. Furthermore, the fact situation obtaining in this case already suggests that the State had no intention to run and maintain canteen as a department and the intention of the State being not to run the said canteen as one of its department, the question of giving grant or for that matter making of a provision for return of furniture and requirement as were provided for would not have arisen."

11. The above decision is referred in the present reference for the purpose of the view taken by the Hon'ble Court that if a canteen is a product of statute then the establishment of the principal employer where the canteen is being run, would have given a statutory right to the employees of the said canteen to claim regularization under the principal employer directly if the eligibility for regularization is met otherwise. But, if such canteen is not an obligatory function of the principal employer as being the statutory provision under any law or a product under contractual obligation, the principal employer cannot be called upon to act for regularization of the canteen workers by way of statutory obligation. It has already been seen in the earlier part of this Award that the management Bank has claimed that establishment and running of the canteen in the Bank premises was undertaken for the welfare scheme for the employees of the Bank. So, it is not an obligatory part of the Bank to create such an establishment and even though the canteen committee is formed with the officers and employees of the Bank, it has got a separate existence even though the entire infrastructure with all contents are supplied by the Bank and subsidy, from time to time is also being paid by the management Bank. It is admitted by the workers that their services started from the date of their engagement in the canteen of the Bank, by the canteen committee and they were never engaged or employed by the management Bank directly. When there is absence of employer-employee relationship in between the management Bank and these canteen workers, their claim for regularization cannot be made before the management Bank with any enforceable right, or in other words, no contractual obligation or statutory force empowers these canteen workers to claim their employment directly under the management Bank and, thus, their claim of regularization directly under the management Bank as sub-staff or Class-IV staff cannot be entertained.

12. In view of the discussion made above, I am of the view that the demand of the workmen in the present reference for regularization of their services under the management of Central Bank of India, Kolkata is not supported by any legal provision and it can never be stated to be a justified claim.

13. In result, these workers are not entitled to any relief in consequence to such claim of regularization which has not been entertained.

An Award is passed accordingly.

Dated, Kolkata,
the 9th June, 2011.

JUSTICE MANIK MOHAN SARKAR, Presiding Officer

नई दिल्ली, 14 जून, 2011

का. आ. 1827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अरनाकुलम के पंचाट (संदर्भ संख्या 6/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/41/2009-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India and their workman, received by the Central Government on 13-6-2011.

[No. L-12012/41/2009-IR (B-1)]
RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

SHRI D. SREEVALLABHAN, B. SC., LL.B, Presiding Officer

(Thursday the 9th day of June, 2011/19th Jyaishta, 1933)

L.D. No. 6/2010

Workman : Shri Venugopalan K.,
S/o Sri Kesavan,
Kulanthinkara Puthen Veedu,
Veliyamcode P.O.,
Thiruvananthapuram.

By Adv. Shri Jimmy George and Premchand.

Management : The Manager (Personnel),
Reserve Bank of India,
Administration Division,
Thiruvananthapuram.

In person (Manager, Personnel).

This case coming up for final hearing on 9-6-2011 and this Tribunal-cum-Labour Court on the same day passed the following :

AWARD

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

2. The reference is :

"Whether the action of the management of Reserve Bank of India in dismissing the services of Shri Venugopalan K., an Ex-Sweeper is legal and justified ? If not, to what relief the concerned workman is entitled ?"

3. The workman was working as a Sweeper in the management bank from 19-4-1982. For the intermittent unauthorized absence he was imposed with penalty on six occasions. After that for his continued unauthorized absence from 4-10-2000 disciplinary proceeding was initiated against him. After conducting enquiry he was found guilty of the misconduct and imposed with the penalty of dismissal from service w.e.f. 6-12-2011. Challenge is made with regard to the dismissal from service by raising the dispute which led to this reference.

4. The workman filed claim statement challenging the validity of the enquiry as well as the imposition of penalty.

5. Management filed written statement contending that the workman unauthorisedly absented himself on 34 occasions covering a period of five months and one day during 1999 and on sixteen occasions covering a period of six months and four days during the year 2000 and his continuous absence from 4th October, 2000 necessitated the initiation of disciplinary proceedings which resulted in his dismissal from service. The enquiry was properly conducted without violating the principles of natural justice and the penalty was imposed considering the gravity of the misconduct and also the penalty imposed on previous six occasions for unauthorized absence.

6. The workman did not file any rejoinder in spite of the specific posting. After that the case was posted for

evidence. Workman was continuously absenting himself even from the time when the case stood posted for rejoinder. From the conduct of the workman as well as the other facts and circumstances it appears that there is no existing dispute. As the workman did not appear and adduce any evidence to substantiate his case it can only be held that the action of the management in dismissing the services of the workman is legal and justified.

In the result an award is passed finding that the action of the management in dismissing the services of the workman Shri Venugopalan K. is legal and justified.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 9th day of June, 2011.

Appendix - Nil.

D. SREEVALLABHAN, Presiding Officer

नई दिल्ली, 14 जून, 2011

क्र. आ. 1828.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट (संदर्भ संख्या 1/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-2011 को प्राप्त हुआ था।

[सं. एल-41012/45/1996-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2011

S.O. 1828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2004) of the Central Government Industrial Tribunal-cum-Labour Court-II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Eastern Railway and their workman, received by the Central Government on 9-6-2011.

[No. L-41012/45/1996-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

Complaint No. 1 of 2004

In the matter of a Complaint under Section 33A of the I.D. Act, 1947.

[Arising out of Reference No. 21 of 1998 - Ministry's Order No. L-41012/45/96-IR(B) dt. 23-6-97]

PARTIES :

Shri Kantilal Saw,
Z.T.C./Bhuli/Dhanbad,
Qr. No. 52/55 ... Complainant

Versus

Railway Manager,
Eastern Railway, Dhanbad,
Division, P.O. and
Dt. Dhanbad ... O. P. Management

APPEARANCES :

On behalf of the complainant : Shri Kantilal Saw,
the Complainant himself.
On behalf of the O. P. management : Shri Gopal Chandra Jha,
Authorised Representative of the
management and Mr. B. M. Prasad,
Advocate.

State : Jharkhand Industry : Railways
Dhanbad the 30th May, 2011.

AWARD

This is a complaint under Section 33A of the I.D. Act, 1947 filed by the complainant Shri Kanti Lal Saw, Z.T.C. Bhuli, Dhanbad, against the O.P. management named above.

2. The complainant/petitioner Kanti Lal Saw, Ex. Peon, ZRIT/Bhuli under D.E.A.E./T.R.D/SDH is present. Mr. B. M. Prasad, Ld. Advocate for the O. P. management is present.

3. The petitioner/complainant by moving his petition dated 3-5-2011 after serving its copy upon the O. P. management representative Gopal Chandra Jha today, has submitted that he has already retired from his service, so he wants to withdraw this Complaint petition. Mr. B. M. Prasad Ld. Counsel for the O.P. management by filing a petition dated 28-5-11 on behalf of the management has also conceded to it, submitting the particulars of payment.

4. Perused the case record of the Complaint petition, it is apparent that the case was pending for hearing argument, but meanwhile complainant voluntarily declined to proceed with the case on account of his retirement and accordingly, the payment has been made to him as per the particulars of the petition enclosed with the petition of the O. P. management.

Under the circumstances, the Complaint petition is dismissed as withdrawn.

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्र. आ. 1829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 11/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/58/2008-आई आर (बी-11)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen which was received by the Central Government on 15-6-2011.

[No. L-12011/58/2008-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Monday, the 2nd May, 2011

PRESENT :

A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 11/2009

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947). between the Management of Indian Bank and their Workman].

BETWEEN :

The General Secretary,
Indian Bank Employees' Union,
25, 2nd Line Beach,
Chennai-600 001 ... 1st Party/Petitioner Union

Versus

The Deputy General Manager,
Indian Bank,
Circle Head, Circle Office, 46—51,
Katpadi Road,
Vellore-632 004 ... 2nd Party/Respondent

APPEARANCES :

For the 1st party/ : Sri. J. Thomas Jeyaprabhakaran,
Petitioner Authorized Representative

For the 2nd party/ : M/s. T. S. Gopalan and Co.,
Management Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12011/58/2008-IR(B-II) dated 26-8-2008 referred the following Industrial Dispute to this Tribunal for adjudication :

The Schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Vellore in denying the One-third Scale Wages to Smt. Lakshmi, PPTS working in Ocheri Branch is justified? What relief Smt. Lakshmi is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 11/2009 and issued notices to both sides. First Party appeared through Authorized Representative, Second Party appeared through his counsel. They filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The averments in the Claim Statement briefly read as follows :

The ID is against the continued denial of the eligible 1/3rd scale wages to Smt. Lakshmi, Sweeper, Ocheri Branch. Lakshmi was initially engaged as Sweeper in December, 1982. She superannuated in February 2008 at the age of 60 years. The Management standardized the parameters in the determination of wages of the PTS through Circulars No. IRD/2/80 dated 28-10-1980 and IRD/3/80 dated 18-11-1980 clarifying the wages payable on the basis of one Floor Space Area to be cleaned in terms of sq. ft. and total working hours per week details of which are elucidated in Para-4 of the Claim Statement. The Bipartite Settlement dated 10-4-1989 provided for fixing wages of PTS on the basis of number of hours engaged per week. It was further clarified by circular dated 23-2-1989 that PTS are eligible for a particular scale wages from the date of performing the duties as per the two parameters. Claim for scale wages from eligible sweepers has to be considered from the date of performing their duties and branches may be authorized to pay arrears w.e.f. the date of actual duty. The Bipartite Settlement stipulates hours of work only. Bank introduced concept of sweeping area in order to clarify since it is difficult to quantify the worked turned out by the employee based on the hours of work alone. Lakshmi swept an area of 1600 sq. ft. for more than 2 hours daily. She should have been fixed at 1/3 wages in the scale of pay of Sub-Staff employees with pro-rata 1/3rd annual increment. But she was paid only consolidated wages of Rs. 740 per month from 1-11-1997 and Rs. 1,050 from 1-11-2002 of course with arrears when consolidated wages were revised. She

was not absorbed into regular service to deny her wages and attendant benefits such as pension, PF, Gratuity, Leave Salary, Uniform, LFC, Staff Loan, etc. As a model employer of the State the Management is obliged to extend the scales to her. It is with effect from 27-12-1982, the date of initial appointment that she is to be absorbed. On 31-1-1997 the Zonal Office got ascertained the quantum of arrears to be paid if she were to be regularized in 1/3rd scale wages w.e.f. 27-12-1982 which was reported by the Branch. From 1990 she has been fetching water from a distance of more than 75 metres for which as per Circular an additional 25% of the applicable rates of wages have to be paid but which was denied. Thus the ID arose in which the Bank admitted readiness to pay the eligible enhanced scale wages prospectively. The denial of the claim is unjust and illegal. Branch by letter dated 21-2-1997 reported that as against eligible sum of Rs. 71,865 she had been paid Rs. 33,535 only. At the newly shifted premises she had to sweep more than 1300 sq. ft. The claim is to be given with retrospective effect from December, 1982 till date of superannuation in February, 2008.

4. The Counter Statement contentions briefly read as follows :

Regular pay-scales can be sanctioned to the Part Time Sweepers only if they are in the permanent service of the Bank. Lakshmi was not considered for permanent appointment in the Bank, in the absence of which regular pay cannot be sought for. The two parameters for determination of pay-scales are applicable only to Part-Time Sweeper in permanent service. With engagement of Lakshmi on temporary basis as Part-Time Sweeper on consolidated wages regular pay scale and other benefits cannot be claimed as a matter of right. She herself admitted her engagement as a Casual Sweeper drawing fixed wages on 2-6-2003. Merely due to payment of arrears of revised consolidated wages she cannot claim regular pay-scale in 1/3 wages. It is denied that Bank did not absorb her in order to deny her eligible benefits. Bank did not absorb her services since she failed to fulfil the norms for the same. She having not been recruited on regular recruitment rules and regulations petitioner is trying to gain benefits by way of backdoor entry. The decision of the Supreme Court in Uma Devi's case is against her regularization. Regular pay-scale together with arrears for the period of casual engagement cannot be demanded. Engagement prior to permanency will not attract regular pay scale and other benefits. There is no justification for claiming regular pay in the 1/3rd scale wages. Claim for an additional 25% of scale wages cannot be considered since Lakshmi was not in permanent service and it is also evident that the distance from the water tap to the office was only 20 ft. whereas for drawal of allowance distance is to be more than 50 metres. The Petitioner Union raised a dispute claiming regular pay-scale instead of claiming regularization of her services for which she is not entitled. The proposal of the Bank dated

25-6-2006 to pay regular pay scale to Lakshmi prospectively is only a message for considering her case for permanent employment but which the Petitioner Union refused to accept and insisted for arrears of wages. It is denied that the action of the Management is illegal. Petitioner Union is responsible for her present status. The claim is to be rejected.

5. Rejoinder allegations in a nutshell are as follows :

Bipartite Settlement states that Sweepers drawing consolidated wages are also Part-Time employees and not casual workers. Those drawing monthly consolidated wages are Part-Time employees just like those on scale wages. Her engagement was stretched for 26 long years and was disengaged at the age of 60 years. It was never disputed by the Management that Lakshmi fulfilled the parameters for 1/3rd scale wages. Absorption in most cases was by regularization and not through Employment Exchange sponsoring. How and why Lakshmi alone could be arbitrarily singled out for being ineligible for regularization in spite of the antiquity of her engagement as back as 1982 much prior to 1989 guidelines ? Claim of permanent absorption to arrears of scale wages from December, 1982 by the Union was due to the unhelpful attitude of the Bank. It was duty bound on the Administration to pay the eligible wages and terminal benefits to her. Letter dated 31-1-1997 of the Zonal Office, Vellore to calculate the quantum of arrears to be paid if she is to be regularized in 1/3rd scale wages establishes her claim was based on facts. The Bank informed that she has been paid Rs. 33,535 against eligible sum of Rs. 71,865. Lakshmi very much fulfilled the norms for regularization. The administration for no reason failed to fill up the permanent vacancy for long. She also could have been sponsored by the Employment Exchange being a registered candidate. For failure on the part of the administration the individual should not be penalized. As regards the premises of the Branch it was more than at the stipulated distance of 50 metres. Justice delayed is justice denied. Management prospectively considered scale wages only from 2006 knowing that she was due to retire shortly after few months. Hence the Union was constrained to brush aside the offer. Management has favourably considered identical claims. The present claim is legal and justified. Those drawing monthly consolidated wages are to be placed on par with those drawing scale wages. Their services in consolidated wages being regularized they cannot be termed as casual employees. The endless exploitation of Smt. Lakshmi and denial of eligible 1/3rd scale wages and water carrying out allowance are illegal and unjustified and the same has to be directed to be paid by the bank.

6. Points for consideration are :

- (i) Whether the denial of 1/3rd scale wages to Smt. Lakshmi, PPTS, Ochheri Branch of Indian Bank is justified ?

- (ii) To what relief the concerned workman is entitled ?

7. Evidence consists of Ex. W1 to Ex. W30 on the petitioner's side and Ex. M1 to Ex. M13 on the Respondent's side, both sets marked on consent. No testimony was adduced on either side.

Points (i) and (ii) :

8. Heard both sides. Perused the records and documents. The precise arguments on behalf of the Petitioner Association are that the case of the petitioner is a classic instance of unending exploitation of a Part-Time Sweeper who rendered 26 years of service by a Nationalized Bank, a model employer under Government of India. It is a case of gross-discrimination between the alike workmen. The engagement of the workman was in a permanent vacancy. It is not true for the Management to argue that she has not been in regular employment. The fact that the Respondent Management expressed readiness to regularize her prospectively w.e.f. 2006 at a time when she was due for superannuation in the year 2008 depicts the oblique motive of the bank to steal away her benefits that might have accrued to her. The engagement of the workman is not a casual one against any casual vacancy but only against permanent vacancy kept without regularizing the incumbent for 26 years which is unfair labour practice. The decision of the Apex Court in Uma Devi's case is not applicable to the facts of the case on hand. There are no tangible reasons for keeping the workman without regularization. In the interest of justice the Respondent Bank was duty bound to pay her eligible 1/3rd scale wages from 1982 to till date of superannuation with consequential benefits thereof. Prospective regularization with effect from 2006 proposed by Bank was with the oblique motive of depriving the workman from the eligibility of pension, DCRG, commutation of pension, etc. She is to be deemed to be regularized w.e.f. 1982 as done in similar antiquated instances.

9. Per contra, the arguments on behalf of the Respondent are that the stand of the Bank to regularize the workman and pay 1/3rd scale wages from prospective date was being frustrated at the instance of the Union which espoused her cause. The Union insisted for her claim being related back to 1982. The concerned branch of the Indian Bank was started only in the year 1982 and there has not been any sanctioned post of PPTS. Hence the employment of the workman was as casual on daily wage. Only upon regularization she was to be entitled to scale wages. Here the issue is not one of regularization. The stand of the Union which has been espousing the cause of similar workmen had been selective and not for regularization of all Part-Time Sweepers. They got someone regularized. The principle of equal pay for equal work is not applicable to the particular case of the workman. The workman having remained as a non-regularized PTS the claim cannot be asked for now.

10. Evidently the workman-PTS did not stand regularized. She superannuated in February 2008. While on behalf of her a claim is mooted for conferring deemed regularization on her, according to the Respondent she cannot be held to have been a regularized hand. While again according to the petitioner she was being denied conferment of regularization but was being considered for giving the same benefit prospectively w.e.f. 24-3-2006 only to see that she does not become eligible for pension, commutation of pension, DCRG, etc. as she was due for superannuation with effect from the year 2008. It is also pointed out on behalf of the Respondent that the Petitioner Union did not espouse the case of the workman PTS for regularization. It was doing it in a selective manner and therefore it is only the Petitioner Union which is to be faulted. But it is the admitted case of the Respondent that the Petitioner Union has been insisting for payment of 1/3rd scale wages instead of regularization. Again according to the Respondent the scale wages cannot be given without regularization. According to the Petitioner Union the attitude of the Respondent Management was not helpful and therefore it was standing for payment of scale wages. The Management's case is that non-absorbing the services of Lakshmi is not to deny her eligible benefits. According to them she failed to fulfil the norms for absorption. Why she did not fulfill the norms for absorption as averred are that she was not recruited on the basis of Recruitment Rules and regulations. She was a backdoor entry engaged at the instance of the Regional Manager when the branch was established. Therefore, the decision of the Apex Court in Uma Devi's case is applicable. Regular pay-scale with arrears cannot be demanded for casual engagement. Engagement prior to permanency will not attract regular pay and other benefits. The proposal of the bank dated 25-6-2006 to pay regular pay scale to Lakshmi prospectively was only a message or considering her case for permanent employment which was refused by the Petitioner Union. According to the Petitioner Union Lakshmi had fulfilled the parameters for 1/3rd scale wages. Absorption in most cases was by regularization and not through Employment Exchange sponsoring. Lakshmi has been arbitrarily discriminated.

11. A scrutiny of the entire materials shows that there is considerable force in the contention raised on behalf of the workman. This is a case where work was extracted from the workman for 26 years. In fact the Management expressed its gesture nodding for conferment of regularization on the workman by offering to provide 1/3rd scale wages from a prospective date which was not palpable to the Petitioner Union and therefore was declined. The Management had also ascertained the quantum of arrears of wages payable to the workman in the event of her being regularized with effect from the initial date of her engagement. Why it was not being implemented is not unfolded. After having extracted the

work for a long period of years now it could not be held that she is not entitled to be regularized if otherwise she could be regularized and given regular wages retrospectively. The decision of the Apex Court in Uma Devi's case is not applicable to a situation in which there could be read element of unfair labour practice in extracting the work of labourers as provided under Section-30 of the Industrial Disputes Act. Even if the Petitioner Union did not press her claim for regularization but was insisting for payment of regular wages only when it is such that should she become eligible for 1/3rd scale wages the required pre-requisite of her being regularized before hand needed to have been done and the same having not been fulfilled she is not to be given the benefit of regular wages the scope of reference notionally and logically to be deemed extended to the aspect as to whether non-regularization of the workman is legal and justified. When a demand of the kind was made it was duty bound for the Respondent to proceed with the process of regularization of workman so as to confer on her permanent status entitling her to regular wages. Discernibly similar workmen have been extended such benefits by the Management. As is the case of the Respondent until and unless the workman is regularized she is not entitled to the regular wages. It has become trite now that notwithstanding the couched terminology in the reference made by the appropriate Government, as to what has been the true axe to grind between the parties to be resolved in the adjudication may have to be gathered from the real intention of the parties as disclosed from their pleadings found narrated in sufficient details or elaboration. So viewed, when the terms of reference deal with the aspect of justifiability of the denial of 1/3rd scale wages and while the denial thereof is owing to non-regularization of the workman as admitted by the Respondent the said aspect of non-regularization of the workman is also constructively at issue in the dispute involved and therefore the same is also to be taken for granted as comprised within the referred question. There is no reason for the Management not to extend the said benefits to the present workman also. That the workman already has gone out of service on superannuation does not mean that she cannot be conferred with the status of regularization retrospectively. The quality and quantum of work turned out by her would not have remained not the same if she had been regularized too. The want of efficacy on the part of the Union to espouse her case well from her point of view as in other instances, as contended, cannot be allowed to turn disadvantageous to her. When in other cases the Union under a so-called selective approach brought the cases of her counterpart PTS effectively espoused and obtained for them all the benefits that the very same Union if and when having not been able to achieve the purpose with the same effectiveness shall not be a ground to disallow the outright benefits that she is entitled to get. When even while in service after regularization, merely for that reason the quality and

quantum of her work would not have had any impact of any substantial change there is no meaning in holding that the workman who did not stand regularized before her retirement could not be allowed to be regularized with retrospective effect.

12. On all the above considerations, I am of the view that the workman Lakshmi is to be conferred with regularization retrospectively with effect from the date of her initial engagement on par with her other counterparts whose cases have been favourably considered by the Management or she is to be deemed to be regularized with effect from the same date upon which she is entitled to the normal benefits including superannuation benefits that may flow out of the status of a regularized workman. She is also to be given the resultant arrears in wages and all attendant benefits from the date of her initial engagement. Though it is argued that still the workman may stand to lose by way of loss of interest on the pecuniary claims and that justice delayed is justice denied, I am not inclined to grant interest on the pecuniary claims in the particular facts and circumstances of the case. Ordered accordingly.

13. Resultantly it is held that denial of 1/3rd scale wages to the workman is not justified.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 2nd May, 2011).

A.N. JANARDANAN, Presiding Officer

Witness Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
(1)	(2)	(3)
Ex. W1	19-03-2006	Letter from Indian Bank, Employees Union addressed to Zonal Manager, Vellore.
Ex. W2	31-05-2005	Letter from Indian Bank Employees Union to Assistant Commissioner of Labour (Central), Chennai.
Ex. W3	24-03-2006	Letter from HO : HRM Deptt. addressed to Asstt. Labour Commissioner, Chennai.
Ex. W4	29-10-2007	Letter from Indian Bank Employees Union addressed to Assistant Commissioner of Labour (Central).

(1)	(2)	(3)
Ex. W5	28-10-1980	Indian Bank, HO : Industrial Relations Deptt. Circular No. 2/80.
Ex. W6	23-02-1989	Letter from HO : Personnel Deptt. addressed to Zonal Office.
Ex. W7	28-07-1993	Settlement dated 28-07-1993 under ID Act between the Management and the Union.
Ex. W8	27-02-2002	Settlement dated 27-02-2002 under ID Act between the Management and the Union.
Ex. W9	30-01-2002	HO : Personnel Deptt. letter addressed to all Zonal Managers.
Ex. W10	12-10-1993	Settlement dated 12-10-1993 under ID Act between the Management and the Union.
Ex. W11	11-11-1993	Settlement dated 11-11-1993 under ID Act between the Management and the Union.
Ex. W12	29-04-1993	Settlement dated 29-04-1993 under ID Act between the Management and the Union.
Ex. W13	06-12-1993	Settlement dated 06-12-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex. W14	06-12-1993	Settlement dated 06-12-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex. W15	21-08-1993	Settlement dated 21-08-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex. W16	13-04-1993	Settlement dated 13-04-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).

(1)	(2)	(3)	(1)	(2)	(3)
Ex W17	13-04-1993	Settlement dated 13-04-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W25	24-09-1993	Settlement dated 24-09-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W18	25-05-1993	Settlement dated 25-05-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W26	13-01-1994	Settlement dated 13-01-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W19	13-04-1993	Settlement dated 13-04-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W27	13-01-1994	Settlement dated 13-01-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W20	21-03-1993	Settlement dated 21-03-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W28	13-01-1994	Settlement dated 13-01-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W21	21-03-1993	Settlement dated 21-03-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W29	13-01-1994	Settlement dated 13-01-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W22	08-06-1994	Settlement dated 08-06-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex W30	23-08-1993	Settlement dated 23-08-1993 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).
Ex W23	30-05-1994	Settlement dated 30-05-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	On the Management's side		
Ex W24	30-05-1994	Settlement dated 30-05-1994 under ID Act between the Management and the Union before Assistant Commissioner of Labour (Central).	Ex No.	Date	Description
			(1)	(2)	(3)
			Ex M1	28-10-1980	Circular No. IRD/2/80 - IR Deptt. of Respondent - reg. Floor Space/Working hours per week/wage per month.
			Ex M2	18-11-1980	Circular IRD 3/80 - reg. Part Time Sweepers.
			Ex M3	04-03-2003	Circular of DGM of respondent Bank regarding engagement of Sub-Staff during leave vacancies.

(1)	(2)	(3)
Ex M4	23-02-1989	Bank's circular regarding payment of wages to permanent part time sweepers.
Ex M5	16-01-2006 and 09-12-2005	Letter from Respondent to Union enclosing extract of minutes of Central Consultative Committee Meeting for Award Staff held on 09-12-2005.
Ex M6	16-02-1995	Circular—IRC—95—reg. Part Time Sweepers enclosing circular IRD 2/80 dated 28-10-1980.
Ex M7	28-07-1993	Settlement u/s 18(1) of ID Act regarding filling up of Part Time Sweepers.
Ex M8	19-06-1995	Copy of letter from Ministry of Labour, Government of India, New Delhi—reg. Engagement of Casual Sweepers.
Ex M9	14-02-1996	Internal Memo from Ocheri Branch to Zonal Office (ZO) Vellore—forwarding of details reg. Mrs. Lakshmi, and enclosing Age Certificate of Mrs. Lakshmi dated 12-02-1996.
Ex M10	02-06-2005	VIII Bipartite Settlement—extract—Revised Rate for Part Time Sweepers.
Ex M11	03-09-2005	Internal Memo from Bank's Circle Office, Vellore (PTS/2005) to all the Branches in Vellore Circular and furnishing of details regarding Lakshmi.
Ex M12	18-08-2008	Minutes of Central Consultative Committee Meeting with union.
Ex M13	04-02-2009	Letter from Chief Manager, Indian Bank, Vellore to Chief Manager, HO, Chennai—reg. Last drawn Basic of Smt. Laxmi and the date of her Retirement from service.

नई दिल्ली, 15 जून, 2011

का. आ. 1830.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 83/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/150/2001-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the industrial dispute between the management of Syndicate Bank and their workman which was received by the Central Government on 15-6-2011.

[No. L-12012/150/2001-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
III MAIN, III CROSS, II PHASE, TUMKURROAD,
YESHWANTHPUR, BANGALORE-560 022**

Dated : 10th May, 2011

PRESENT

Sri S.N. NAVALGUND, Presiding Officer

C.R. No. 83/2001

IPARTY

Smt. Meenakshi R. Shetty, The Deputy General
Pinto Compound No. 3/9/46 Manager, Syndicate Bank,
Nanthoor, Vivekananda Zonal Office,
Road, II Cross, Syndicate Towers,
Mangalore-575005 Udupi-576101
Karnataka State Karnataka State

II PARTY

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/150/2001-IR (B-II) dated 28th November, 2001 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Deputy General Manager, Syndicate Bank, Zonal Office, Thiruvananthapuram is justified in awarding the punishment of dismissal from service to Smt. Meenakshi R. Shetty, Clerk, Syndicate Bank, Udupi Branch for alleged act of misappropriation? If not, what relief the said employee is entitled to?"

2. The brief facts leading to this reference and award may be stated as under :

Smt. Meenakshi R. Shetty (hereinafter referred as first party for the sake of convenience) who joined the services of the Syndicate Bank (hereinafter referred as Second Party) w.e.f. 08-01-1975 while working at its Regional Office, Belgaum came to be issued with charge sheet on 31-07-1998 on the allegations that while she was working at its Kankanady Branch, Mangalore as Clerk from 05-08-1985 and was entrusted with the cashier duties w.e.f. 14-07-1997 to 13-01-1998 on 05-01-1998 she received an amount of Rs. 5492 from Shri Krishna Nayak towards water consumption charges pertaining to Door No. 4-44/10, Kankanady of Shri Abdul Rehman T. for credit of current account of Mangalore City Corporation and issued a counter foil to him duly initialed by her but did not account the same in the bank's books of accounts and similarly on 12-01-1998 she received Rs. 636 from Mr. Jagdish in respect of the water consumption charges bill bearing No. 190444 dated 15-12-1997 pertaining to Nagori Vyavasaya Seva Sahakari Bank Ltd., Kankanady for credit of the account of Mangalore City Corporation and failed to credit the same to the account of Mangalore City Corporation. It is also alleged in the charge sheet that on 04-05-1998 Shri Krishna Nayak approached the Kankanady branch complaining that the water consumption charge of Rs. 5492 deposited by him on 05-01-1998 for credit of Mangalore City Corporation account has not been remitted/credited to the account of the Corporation on account of which a notice has been served on him by the Corporation to pay the amount along with the interest amounting to Rs. 5730 and on verification of bank records of 05-01-1998 by Mr. T. Shivananda Karkera, the Scroll Officer since it did not reveal any such remittance, along with the complainant and two other clerks he approached the first party on 04-05-1998 at Father Muller's Charitable Institution Extension Counter where she was working on that day and informed her of the complaint and she confessed having received the amount of Rs. 5492 from Shri Krishna Nayak on 05-01-1998 and having failed to account the same to the books of accounts of the bank and also undertook to reimburse the said amount to Shri Krishna Nayak directly and that on 05-05-1998 Shri Krishna Nayak remitted an amount of Rs. 5730 towards the account of Mangalore City Corporation and that on 25-05-1998 the Manager Nagori Vyavasaya Seva Sahakari Bank Ltd., Kankanady, Mangalore vide his complaint dated 25-05-1998 addressed to the Manager of the Kankanady,

Mangalore branch of the second party complained that on 12-01-1998 he had deposited Rs. 636 at their Kankanady branch through one Mr. Jagdish connected with the above Sahakari Bank being the water consumption charges bill bearing No. 190444 dated 15-12-1997 for credit of the account of Mangalore City Corporation and enclosed a photo copy of the counterfoil issued by her bearing the stamp and that the said amount being not credited to the account of the Mangalore City Corporation the Corporation has claimed the said charges from them in the subsequent water consumption charges bill and requested for necessary action and on verification of the bank's records it revealed that on 12-01-1998 first party was working as Cashier but failed to account for and thus she with a dishonest intention of deriving pecuniary benefit for herself misappropriated amounts aggregating to Rs. 6128 belonging to the water consumer of Mangalore City Corporation and thereby she committed serious misconduct as per the provisions of Clause No. 19 of the Bipartite Settlement and called upon her to submit her written statement of defence within 15 days from the date of receipt of the said charge sheet.

3. On first party submitting the statement of defence dated 25-08-1998 denying the charges leveled against her, the second party decided to proceed further in the matter by ordering for an enquiry appointing Shri S.G.J. Das, Asstt. Manager, Karwar Branch as enquiry officer to hold enquiry in the matter by order dated 03-11-1998, the copy of which is marked as Ex. M2 during the enquiry on preliminary issue regarding DE. Then the enquiry officer after causing notice of appearance to the first party and complying with the necessary requirements of preliminary hearing after recording the evidence of Shiv P.V.V. Kamath, Dy. Chief Officer, Vigilance Head Office, Manipal, Shri B.N. Baliga, Dy. Chief Manager, PMC, ZO, Udupi and Shri A. Shivananda Karkera, Manager, Kankanady Branch for the management as MW1, MW2 & MW3 and partly Mr. Jagdish claims to have deposited the bill pertaining to Nagori Vyavasaya Seva Sahakari Bank, as MW4 and exhibiting 19 documents for the management as Ex. MEX 1 to MEX-19 (enclosed annexure) and for the first party marking 5 documents as Ex. DEX-1 to DEX-5 (enclosed annexure). After receiving the written submission of management representative and defence representative submitted his report dated 12-05-1999 to the Disciplinary Authority which is marked as Ex. M4 during the enquiry on preliminary issue regarding DE holding both charges as proved. Then the disciplinary authority after forwarding the copy of the enquiry report to the first party called upon her for personal hearing through notice dated 31-07-1999 and on receipt of her reply, by his order dated 14-09-1999 accepted the findings of the enquiry officer

and passed the impugned order awarding the punishment of dismissal from services and on appeal by the first party dated 30-09-1999 to the appellate authority after giving opportunity of personal hearing by his order dated 5-11-1999 confirmed the order passed by the Disciplinary Authority. Then on failure of the dispute raised by the first party before the Assistant Labour Commissioner (C) the Central Government made this reference for adjudication.

4. After receipt of this reference the first party filed her claim statement and the second party filed its counter statement. My learned predecessor formulated a preliminary issue touching the fairness of the DE "Whether the DE conducted against the first party by the second party is fair and proper?" and after recording the evidence of the enquiry officer for the second party as MW1 and marking documents at Ex. M1 to M13 and the evidence of the first party as WW1, after hearing the arguments addressed by the learned advocates appearing for both the sides by order dated 7th February, 2007 answered the preliminary issue in the affirmative holding the Domestic Enquiry conducted against the first party by the second party being fair and proper. The learned advocates appearing for both the sides were called upon to address their arguments touching the merits of the enquiry findings and accordingly both of them addressed their arguments.

5. In view of the facts narrated by me above, the points that now arises for my consideration are :

- (i) Whether the finding given by the enquiry officer holding the first party/CSE guilty of the charges levelled against her are perverse ?
- (ii) If not, whether the punishment imposed is disproportionate to the charges roved against her ?
- (iii) What Award ?

6. On appreciation of the charges levelled against the first party with the evidence brought on record for the management through MW1 to MW4 and Ex. MEX 1 to 19 for the management and the first party/CSE. examined as WW1 and Ex. DEX 1 to 5, in the light of the arguments addressed by the learned advocates appearing for both sides and the careful scrutiny of the finding of the enquiry officer, my finding on the above points are as under :

- (i) Affirmative
- (ii) Does not arise for consideration
- (iii) The first party is entitle for reinstatement with full back wages and other consequential benefits for the following reasons :

Reasons :

MW1, Shri P.V.V. Kamath, Dy. Chief Officer. Vigilance in the second party management having deposed that he verified the certified copies of identity attendance register of Kankanady branch for the month of January 1988, order book bearing the order of the Chief Manager on 31-3-97 and 11-7-97, copy of Customers portion of the water bills bearing in the name of Shri Abdul Rahiman for Rs. 5492, Carbon copy of bank's scroll for the collection account of water bill dated 5-1-1998, B-28 register i.e., cashier's scroll bearing page Nos. 565, 566, 567, counterfoils/bankers portion of the slip bearing Nos. 181141 for Rs. 366, 193421 for Rs. 192 and 196709 for Rs. 297, 011653 for Rs. 5730, Bank's scroll for the collection of water bill dated 5-5-98 original complaint dated 25-12-1998, original water bill bearing No. 190444 for Rs. 636 and carbon copy of bank's scroll for the collection of account of the water bill as on 12-1-98 and recorded the statements of Shri B.N. Baliga, Manager of Kankanady branch, and Shri A. Shivananda Karkere, Asstt. Manager of Kankanady branch and found the first party having collected the impugned amount from Shri Krishna pertaining to water bill in the name of Shri Abdul Rahiman T. failed to account the same being a formal witness, the evidence of Shri B.N. Baliga, Manager of Kankanady branch, and Shri A. Shivananda Karkere, Asstt. Manager of Kankanady branch who have been examined as MW2 & 3 respectively in the enquiry are relevant. According to MW3, Shri Shivananda Karkere he was working as the scroll officer, whereas, the first party was working as cashier at Kankanady branch and that on 4-5-98 a person came to him along with xerox copy of the water bill (which is at Ex. M3) in the name of Shri Abdul Rahiman T. for Rs. 5492 and complained that he has deposited the water bill on 5-1-1998 at Kankanady branch and that it was bearing the cash received seal of the bank and the initial of Ms. Moenakshi R. Shetty/first party. He verified the cash scroll of 5-1-1998 and as it was not reflecting the bank books, after some discussion with the person who deposited the money as he stated that he can identify the employee to whom the amount was paid, after verification of the bank records he took the person along with two other bank staff members to Father Muller's Charitable Institution E.C. and there he approached the first party who was handling the cash on 5-1-1998 and showed the photo copy of the

voucher (MEx. 3) and she recognized the person who deposited the money and agreed having received the amount and also having affixed the cash received seal and putting her initial certifying the cash being received by her and that during the course of investigation by MW1 she also admitted having received the said amount under MEx 3 and as it was her duty to take his signature as he was a scroll officer on that day and to account the same and as she had failed to account the same she misappropriated that amount.

7. It is borne out from the proceedings recorded by the enquiry officer that the DR before admitting the xerox copy of the water bill as MEx-3 raised objection saying that it is not the original and original be secured. But the Vigilance Officer, MW1 came out with the version that during his investigation when he went to the building in question for enquiry he learnt that Shri Abdul Rahiman T the owner of that building comprising of several apartments had died two years back and that Shri Krishna Nayak was the Secretary of the apartment's association and he was crediting amount to the bank and he approached Shri Krishna Nayak to enquire but he refused to produce the original of the bill on which the seal was affixed by the first party putting her initial saying that the cashier who received the amount has paid the amount in question and she would come into trouble he shall not give his statement or produce the original as such his evidence/statement and the original of MEx-3 could not be secure or produced in the Domestic Enquiry. Absolutely there being no evidence to corroborate the interested version of MW 1 and 3 the first party having confessed/ admitted having received the amount of Rs. 5492 from Shri Krishna Nayak and having put the received seal of the bank and her initial and paid the amount under that bill to Shri Krishna Nayak. Moreover, MEx-3 the xerox copy of the impugned bill bearing the rubber seal of the bank and alleged initial of the first party being not legible which is also clearly admitted by all the three witnesses for the bank, placing lines on such an illegible documents is unsafe, in the absence of any other evidence to corroborate their version. In MEx 3 the date of alleged receipt is not visible and there is a hand written portion above the bill the same being received on 20-12-1997 and having paid on 5-1-1998 at Syndicate Bank, Kankanady branch, the author of which has not been examined in the enquiry. In addition to this when the document/MEX-3 indicates the meter being read on 31-1-1997 in respect of supply of water for the period 28-2-1996 to 31-1-1997, whereas, the hand written endorsement 'received on 20-12-1997' makes to doubt that this hand written endorsement being that of the alleged depositor, Shri Krishna Nayak, because if the meter itself was read or recorded on 31-01-1997 the owner of the building or its

managing Secretary Shri Krihna receiving it on 20-12-1997 after about a year. When Shri Krishna, Secretary of the apartment standing in the name of Abdul Rahiman T., Allegedly paid the bill amount to the first party denied to appear as witness for the bank in the enquiry, admittedly when he has not filed any written complaint to the branch manager for the Kankanady branch, the case made out for the management through MW2 & 3 he had orally complained and on such oral complaint they found the first party having received money from him pertaining to that bill on 5-1-1998 and failed to account the same is very hard to accept. Under the circumstances the finding of the enquiry officer that the management proved the first charge levelled against the first party is in my opinion perverse and not a sound decision that could be accepted by this tribunal.

8. As far as the second charge is concerned, Shri Jagdish who allegedly remitted the bill amount of MEx 10 though came as management witness and examined as MW4 and partly subjected himself for cross-examination and when the enquiry was posted for his further cross-examination he did not turn up sending letter that whatever he has to say has already being stated he is not ready to appear for further cross-examination. When he was partly cross-examined by the DR he has categorically admitted DEX-5 being the letter of the Manager of Nagori Vyavasaya Seva Sahakari Bank Ltd. dated 9-2-1999 wherein he has stated that the bill amount in question that it has come to his notice the amount of bill in question has been credited to the neighbouring building of Door. No. 4-48/1 and that Hemant Kumar having returned the amount to him, there being no loss to his society he withdrew the complaint filed on 24-9-98, this second charge levelled against the first party holds no water. Even assuming for the sake of the management the manager of the society after filing the genuine complaint subsequently to oblige the first party gave such a letter of withdrawal of his complaint to save her job the very MEx 10 relied on by the management do not suggest the received seal of the bank being put by the first party since admittedly it does not bearing her initial or any bodies initial inside the seal. Therefore, on the basis of MEx 10, only because on 12-1-98 the first party was teller cashier in the Kankanady branch it is not possible to conclude that she received the amount under this bill i.e. Rs. 625 and put the seal of the bank having received the amount. Moreover, when there is no direct evidence of the remitter the amount under this bill being actually remitted to the bank and it was received by the first party and she put the received seal on it, the finding of the enquiry officer that this charge has been proved is perverse and cannot be sustained. Under the circumstances I am of the considered view from the evidence placed on record for the management there is no cogent material to prove these charges first party having received Rs. 5492 from Krishna Nayak in respect of water

bill covered under charge No. 1 and Rs. 636 from MW4, Shri Jagdish towards bill No. 190444 produced at Ex. M 10 and having failed to account for the same. In the result I arrived at the conclusion the findings of the enquiry officer on charge Nos. 1 & 2 leveled against the first party being perverse and are not sustainable. Accordingly I set aside the enquiry finding of the enquiry officer as well the consequent orders of the Disciplinary Authority and appellate authority confirming the said finding and imposing the punishment of dismissal on first party.

9. **Point Nos. 1 & 2 :** In view of my finding the finding of enquiry officer that the charges alleged against the first party being proved are perverse and are set aside, the first party is entitle to reinstatement, back wages and all other consequential benefits that she would have derived in the absence of the impugned dismissal order. Under the circumstances I also feel it just and appropriate to saddle the second party management with cost of Rs. 5000 to compensate the inconvenience and humiliation suffered by the first party due to false implication of misappropriation and passing the impugned punishment order of dismissal without proper evidence. In the result, I accordingly answered point Nos. 1 & 2 and pass the following award :

AWARD

The reference is allowed and awarding punishment of dismissal of Smt. Meenakshi R. Shetty/first party is held not justified and she is entitle for reinstatement with immediate effect, with back wages and all other consequential benefits that she was entitle to in the absence of the impugned punishment of dismissal. The second party was also pay cost of Rs. 5000 to the first party.

(Dictated to PA transcribed by her corrected and signed by me on 10-05-2011).

S.N. NAVALGUND, Presiding Officer

ANNEXURE

List of witnesses examined by the management before the Enquiry Officer

- | | |
|---------------------------------------------------------|-----|
| 1. Shri P.V.V. Kamath, Dy. Chief Officer, Vigilance MW1 | |
| 2. Shri S.N. Baliga, Dy. Chief Manager | MW2 |
| 3. Shri A. Shivananda Karkere, Manager | MW3 |
| 4. Shri Jagdish, Attender | MW4 |

Documents exhibited for the Management before the Enquiry Officer

- | | |
|------------------------------------------------------------------------------------------------|--------|
| 1. Attendance Register for the month of January 1998. | MEX-1 |
| 2. Certified copy of the Office Order Book | MEX-2 |
| 3. X-Vol copy of the customer's portion of the Water bill for Rs. 5492 | MEX-3 |
| 4. Carbon copy of Bank's Scrolls for the collection of water bill dated 5-1-98 | MEX-4 |
| 5. Certified photo copy of B28 Register | MEX-5 |
| 6. Certified photocopy of Counter foils | MEX-6 |
| 7. Certified copy of the counterfoil/ bankers portion for Rs. 297 | MEX-7 |
| 8. Carbon copy of Bank's Scroll | MEX-8 |
| 9. Original Complaint dated 25-12-1998 by Nagori Vyavasaya Seva Sahakari Bank, Mangalore. | MEX-9 |
| 10. Customer copy of Original Water bill bearing No. 190444 for Rs. 636. | MEX-10 |
| 11. Carbon copy of Bank's Scroll for the collection of account of water bill as on 12-01-1998. | MEX-11 |
| 12. Certified copy of the Scroll dated 12-01-1998 | MEX-12 |
| 13. Deposition dated 26-05-1998 of Shri B.N. Baliga, Manager | MEX-13 |
| 14. Deposition dated 26-05-98 of Sri A. Shivananda Karkera, Asstt. Manager | MEX-14 |
| 15. Deposition dated 28-05-1998 of Shri Jagdish, Attendant. | MEX-14 |
| 16. Deposition dated 29-05-1998 of Shri Meenakshi R. Shetty. | MEX-16 |
| 17. Letter addressed to DGM, ZO, Udupi dated 9-2-1999. | MEX-17 |
| 18. Certificate issued by the Asstt. Commissioner, Mangalore City Corporation. | MEX-18 |
| 19. Certified xerox copy of water bill bearing No. 011660 for Rs. 1104 | MEX-19 |

**List of witnesses examined by the first party/CSE
before the Enquiry Officer**

1. Smt. Meenakshi R. Shetty, First party DW1

**List of Documents of 1st party/CSE marked in the
Enquiry**

1. Xerox copy of Page No. 40 of Cir. DEX-1
94/95/BC/PD/26/IRD dated 6-5-95

2. Xerox copy of Page No. 41 of Cir. DEX-2
94/95/BC/PD/26/IRD dated 6-5-95

3. Xerox copy of Page No. 44 of Cir. DEX-3
94/95/BC/PD/26/IRD dated 6-5-95

4. Xerox copy of office order register DEX-4
page containing orders dated 12-3-1997,
13-3-1997 and 31-3-1997

5. Letter dated 9-2-1999 of Nagori DEX-5
Vyavasaya Seva Sahakari Bank Ltd.,
Kankanady, Mangalore

नई दिल्ली, 15 जून, 2011

का. आ. 1831.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 68/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/21/2009-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1831.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/21/2009-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Tuesday, the 22nd February, 2011

PRESENT :

Sri A.N. Janardanan, Presiding Officer

Industrial Dispute No. 68/2009

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman)

BETWEEN :

Sri P. Muthupilai : Petitioner/I Party

Vs.

The Asstt. General Manager, : Respondent/II Party
Indian Bank,
Circle Head, Circle Office,
Dr. Besant Road,
Kumbakonam

APPEARANCES :

For the Petitioner : Sri Thomas Jeyaprabhakaran,
Authorized Representative

For the Management : Sri S. Dakshinamurthy,
Authorized Representative

AWARD

1. The Central Government, Ministry of Labour vide its Order No. L-12012/21/2009-IR (B-II) dated 22-06-2009 referred the following industrial dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the management of Indian Bank, Kumbakonam in imposing the punishment of compulsory retirement to Sri P. Muthupilai, an Ex-Clerk/Shroff w.e.f. 15-06-2007 is justified or not ? What relief the workman is entitled to ?”

2. After the receipt of industrial dispute, this Tribunal has numbered it as ID 68/2009 and issued notices to both sides. Both sides entered appearance through their authorized representatives and filed their claim, reply and rejoinder statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows :

The petitioner, a Sub-Staff promoted as Clerk while at Adiramapattinam Branch stood charged under a Show Cause Notice dated 10-01-2006 alleged of having made fictitious credit entry on 06-10-2003 of Rs. 5,000/- in the ID Consumer Loan No. 803/00/1/03 of Mr. S. Karunakaran and to have issued bogus counterfoil to the borrower with his signature affixing "Cash Received" stamp in his handwriting. In his explanation dated 20-02-2006, he denied allegations which further includes, inter alia that the party had informed having no spare money to replace pointed out defective notes come across by the petitioner and he assured to return in a short while after getting back the entire amount and challan but which return did not take place and which incident petitioner instantaneously lost to his memory. He was charge-sheeted on 27-3-2006. Enquiry was held and to the enquiry report dated 19-12-2006 petitioner submitted comments on 22-1-2007. On 28-5-2007 proposed punishment of Compulsory Retirement with superannuation benefits was imposed. He submitted written statement at the personal hearing on 7-6-2007. On 15-6-2007 the punishment was imposed. Appeal preferred on 6-7-2007 was dismissed on 6-3-2008. The punishment is illegal, unjust and is in victimization and unfair labour practice. Concerned party himself remitted the amount subsequent to 6-10-2003 and not on 6-10-2003. A few contradictions between the employee's statement and that of the party regarding the happenings in 2003 are bound to occur. On 6-10-2003 it was not the petitioner but one Senthil Kumar who was working in the Cash Section. Petitioner did not sign in the ledger. Account holder is more competent to depose than any other witness. The absence of any complaint at the initial stage itself evidences innocence of the petitioner. It is prayed that the evidence may be re-appreciated under Section-11A and to hold that petitioner is entitled to reinstatement with all benefits.

4. Reply Statement contentions briefly are as follows :

Petitioner by making fictitious entries and fabricating records misappropriated Rs. 5,000/- by cheating. Following an Investigation report dated 14-2-2004 Show Cause Notice dated 10-1-2006 was issued to the petitioner who in his reply dated 20-2-2006 stated that in his second cash counter Karunakaran, well known to him had to be disposed of at the earliest who tendered Rs. 5,000 to remit to his loan account and petitioner affixed the Cash

Received stamp in the challan. The cash being with defective notes to replace it he promised to return soon. Petitioner entered a transaction in the ledger to arrive at the balance in the transaction which he informed to Mr. Karunakaran. Petitioner admitted guilt and was charge sheeted on 17-03-2006. He participated in the enquiry with Defence Representative. The only cashier on the day was Senthil Kumar. The counterfoil receipt was found not genuine which was in the handwriting of the petitioner. Charges were held proved held by the enquiry report dated 19-12-2006. There were no merits in the appeal. Punishment is only lenient and is justified. It is not tenable to say that customer repaid the entire amount. There is no dispute regarding receipt of money by the petitioner. That petitioner issued counterfoil not on actual receipt of cash and made entries in the ledger is not tenable and is banking practice violation. There was no necessity for formal complaint in this case. When fraud was noticed action was initiated. Adequacy of punishment is beyond the scope of interference by this Tribunal in a like case. The claim is to be dismissed.

5. Contentions in a nutshell in the Rejoinder Statement briefly read as follows :

Petitioner did not admit the guilt and the same are not supported by any evidence.

6. Points for consideration are :

- (i) Whether the punishment of Compulsory Retirement to the petitioner is justified or not ?
- (ii) To what relief the concerned workman is entitled ?

7. Evidence consists of testimony of WW1 and Exs. W1 to Ex. W10 on the petitioner's side and Exs. M1 to Ex. M14 marked on consent on the side of the Respondent with no oral evidence adduced.

Points (i) & (ii).

8. The authorized representatives on either side submitted the respective arguments. It is contended on behalf of the petitioner that there is a delay of 3 years in holding the enquiry in relation to the alleged incident in 2003 in which more importance is seen bestowed for investigation rather than for the enquiry. The petitioner is thereby prejudiced. There is no written complaint against the misconduct. For the credit entries made in the handwriting of the petitioner there was no actual receipt of cash of Rs. 5,000 though the entry happened to be made in the ledger. The money had been returned for being

replaced with fresh currency notes in the place of soiled notes noticed on receipt, which were being returned for being replaced with new currency notes. If it was to defraud petitioner himself would not have written the entries. The customer himself remitted the outstanding balance, who is a government employee. Since the Bank Manager was not prepared to receive the amount payment was effected by Mail Transfer. On 6-12-2003 the customer Karunakaran's Son alone came and there was communication gap between him and his father. By mistake he failed to take back the counterfoil, a negligent act. Petitioner is not guilty of misappropriation and his claim is to be allowed.

9. The contra contentions on behalf of the Respondent are that the petitioner did misappropriation of Rs. 5,000 and he issued bogus counterfoil after destroying the other part of it. On the relevant day the Cashier was one Senthil Kumar who did not account transaction in the book. Petitioner was not at all discharging any function of Cashier on the day. It is alien to comprehension how he happened to receive the money which he himself admits to have received. Honesty would demand petitioner to have remitted the amount to the Cashier. Branch Manager was proceeding to the house of customer for investigation and the customer has reported the remittance earlier to have been made. Counterfoil is in the handwriting of the petitioner. The complaint is only oral and on its basis after verification by the Branch Manager the fact was reported to the higher authorities. The receipt of the cash is admitted. The sum of Rs. 5,000 did not get reflect in the Rough Cash Book. It is further argued that for the grave misconduct of defrauding money only Compulsory Retirement is given and the same is not to be interfered with.

10. A careful consideration of contentions advanced on either side with respect to the relevant materials relied on either side I am led to the conclusion that petitioner does not have any entitlement to succeed. His claim is only apt to be disbelieved. His versions are full of improbabilities and nothing short of utter falsehood. He has not been able to establish that his case is a probable one even by the degree of a preponderance of probability. He is not proved to have been Cashier on that day. But he admitted having received the cash on the day. His contention that finding the currency notes to have been damaged ones he returned the same with the challan to the customer who had promised to return then and there itself with fresh currency notes and he was allowed to go back with the currency notes expecting him to comply with the requirement of that spur of the moment then and there. It is also not believable to hear from the petitioner that he was causing the entries to be made in the lodger without the actual receipt of the cash. The other thing that he instantaneously got the affair lost in memory is still a

matter which cannot be believed without a pinch of salt. A man with normal human conduct or prudence cannot be expected to do so. Such a conduct is also against a banking practice. On all these circumstances his case is apt to be discredited as unworthy of acceptance and it is only to be held that the petitioner is guilty of the misconduct charged against him. The enquiry is fair and proper. The finding is also only just and legal. In **MANAGEMENT OF CATHOLIC SYRIAN BANK LTD. VS. INDUSTRIAL TRIBUNAL, MADRAS-104 AND ANOTHER** (1999-2-LLJ-194) High Court of Madras held "ethical standards cannot be abandoned on plea that Justice should be rendered with mercy—Employee should maintain minimum standard of integrity—Award of Reinstatement and Back wages to workman who did not maintain minimum standard of integrity would amount to rewarding fraudulent and dishonest conduct and would be mocking at integrity and honesty of majority of workmen". The punishment imposed is just proportionate to the gravity of the offence committed. Therefore, the action of the Management in imposing Compulsory Retirement on the petitioner is to be held as only justified. The petitioner is not entitled to any relief.

11. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd February, 2011).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : WW1, Sri P. Muthupillai

For the 2nd Party/
Management : None

Documents Marked On the Petitioner's side

Ex. No.	Date	Description
(1)	(2)	(3)
Ex. W1	20-02-2006	P. Muthupillai's reply to the Show Cause Notice Ref. CO : TAN : VIG : 420/2005-06 dated 10-01-2006 issued to Sri P. Muthupillai
Ex. W2	17-03-2006	Letter Ref : CO/TAN/VIG/429/2005-06 of Deputy General Manager/ Disciplinary Authority Appointing the Enquiry Officer

(1)	(2)	(3)	(1)	(2)	(3)
Ex. W3	28-11-2006	Summing of the Defence representative, Sri J. Sureshy on the enquiry proceedings held against Sri Muthupillai.	Ex. M3	15-11-2003 MEX 1	Adhirampattinam Branch letter dated 15-11-2003 addressed to AGM, Circle Officer, Thanjavur.
Ex. W4	26-12-2006	Letter Ref: COK/Vigil/56154/06-07 dated 26-12-2006 of Asstt. General Manager/Disciplinary Authority enclosing the findings.	Ex. M4	06-10-2003 MEX 2	Counterfoil dated 06-10-2003 for Rs. 5,000 IBCL A/c of Ms. S. Karunakaran.
Ex. W5	22-01-2007	Sri P. Muthupillai's comments over the Enquiry Officer's findings in the departmental enquiry.	Ex. M5	MEX 3	Copy of loan ledger sheet—A/c No. 803/00/1/03 IBCL A/c of Mr. S. Karunakaran 3 Pages (Original produced for verification).
Ex. W6	28-05-2007	Second Show Cause Ref. COK : VIGIL : 56154 : 2007-08 dated 28-05-2007 by the Asstt. General Manager/Disciplinary Authority to the Charge Sheeted Employee and fixing Personal Hearing.	Ex. M6	06-10-2003	Cashier's Rough Cash Book dated 06-10-2003— page 292 to 300 (9 pages).
Ex. W7	07-06-2007	Shri P. Muthupillai's reply to the Show Cause Notice dated 28-05-2007.	Ex. M7	06-10-2003 MEX 5	Officer's cash scroll dated 06-10-2003— page 106–108 (3 Pages) copy.
Ex. W8	15-06-2007	Punishment Order served on Sri P. Muthupillai by the Asstt. General Manager/Disciplinary Authority—Ref: COK : VIGIL : 56154 : 2007-08 dated 15-06-2007.	Ex. M8	14-02-2003 MEX 6	Investigation report dated 14-02-2003 of Mr. K. Pattabiraman, AM, Circle Office, Thanjavur.
Ex. W9	06-07-2007	Appeal preferred by Sri P. Muthupillai before the Asstt. General Manager & Circle Head/ Appellate Authority against the order of punishment of the Asstt. General Manager/Disciplinary Authority.	Ex. M9	20-02-2006 MEX 7	Reply letter dated 20-02-2006 of the CSE Mr. P. Muthupillai for the show cause letter CO : TAN : VIG : 420/2005-06 dated 10-01-2006.
Ex. W10	—	Dispute raised under Section-2(A) of ID Act by Sri P. Muthupillai.	Ex. M10	16-10-2006	Written brief of Presenting Officer on the enquiry proceedings held against Sri Muthupillai.
On the Management's side			Ex. M11	07-06-2007	Personal hearing attended by Charge Sheeted Employee Sri P. Muthupillai.
Ex. No.	Date	Description	Ex. M12	07-03-2008	Orders of Appellate Authority.
Ex. M1	10-01-2006	Show Cause Notice Ref. CO : TAN : VIG : 420/2005-06 issued to Sri Muthupillai.	Ex. M13	09-04-2008	Gratuity received given by Sri Muthupillai.
Ex. M2	09-08-2006 06-09-2006 07-09-2006 20-09-2006	Departmental proceedings conducted against Sri P. Muthupillai, Charge Sheeted Employee.	Ex. M14	07-05-2010 01-06-2010	Statement of Account showing credit of monthly pension to the A/c of P. Muthupillai.

नई दिल्ली, 15 जून, 2011

क्र. आ. 1832.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडस्ट्रियल इन्वेस्टमेंट बैंक ऑफ इंडिया लि. के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 24/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/74/2003-आई आर(बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1832.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Industrial Investment Bank of India Ltd. and their workman, received by the Central Government on 15-6-2011.

[No. L-12012/74/2003-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA

Reference No. 24 of 2003

PARTIES:

Employers in relation to the management of Industrial
Investment Bank of India Ltd.

AND

Their Workman

PRESENT:

Mr. Justice Manik Mohan Sarkar, Presiding Officer

APPEARANCES:

On behalf of the : Mr. Arunabha Ghosh,
Management Ld. Advocate with
Mr. S. K. Karmaker,
Ld. Advocate

On behalf of the : Mr. M. S. Dutta,
Workman Ld. Advocate

State : West Bengal Industry : Banking

20th May, 2011

AWARD

By Order No. L-12012/74/2003-IR (B-II) dated 11-9-2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Industrial Investment Bank of India Ltd., 19 N.S. Road, Calcutta-700001 in terminating the services of Shri Gadai Patra w.e.f. 8-2-2000 is just and fair? If not, what relief the concerned workman is entitled to?"

2. As per written statement of claim, the story of the workman is that he was employed by the management Bank in the year 1985 as temporary Driver and since then he was working there till his termination from service with effect from 12-7-1991. Against the said wrongful termination of service, the workman raised an industrial dispute before the Regional Labour Commissioner (Central), Kolkata and since the conciliation proceeding failed the matter was referred to this Tribunal from the Ministry of Labour, Government of India by an order dated 25-9-1993 and consequently Reference No. 34 of 1993 was initiated. After hearing the parties in that case, this Tribunal passed an Award in favour of the workman with the relief of reinstatement with 50% back wages by an Award dated 22-10-1999 and the said Award was duly published by the Government of India by notification dated 2-11-1999. In consequence thereto the workman was reinstated as daily wage worker by the management Bank and was allowed to work till 7-2-2000. All of a sudden, in a very unceremonious manner, the workman was retrenched again from service with effect from 8-2-2000 by a letter dated 4-2-2000 with false plea. Workman again raised a dispute by claiming the said termination of service as illegal, unjustified and mala fide and also maliciously terming the workman as daily wage worker though the workman never worked as daily rated worker. The workman further claimed that in terms of the Award dated 22-10-1999 in Reference No. 34 of 1993, the order of his reinstatement was made as temporary staff of the Bank and he was entitled to receive payment in the scale of Driver of the Bank as prevalent at the material point of time, he should have been termed as daily wage earner @ Rs. 89.60 per day. It has further been claimed that retrenchment on the ground having no work to offer being wholly malicious as there was sufficient job in the Bank and so the retrenchment was done in gross violation of the provision of Section 25F of the Industrial Disputes Act, 1947. The workman has further stated that the action of the management Bank was otherwise bad in law since while retrenching the present workman, the management Bank has failed and/or neglected to follow the mandatory procedure in Section 25G of the Act rendering the whole action as nullity since many junior workers to the concerned workman was retained in service

while retrenching the concerned workman from service. Immediately after receipt of letter of termination dated 4-2-2000, workman raised strong protest to the management by a letter dated 1-3-2000 and immediately raised a formal industrial dispute with the Regional Labour Commissioner (Central), Kolkata by a letter dated 7-6-2000. It is further stated that on the failure of conciliation proceeding before the Labour Commissioner, this matter was referred back again to this Tribunal by the Ministry of Labour, Government of India for adjudication.

3. In its written statement, the management Bank has stated that the reference is not maintainable as an industrial dispute since the same suffers of infirmity of non-application of mind and it has become infructuous since the car for which the present workman was engaged in not in existence and for that reason the Bank has no scope to continue with the said workman. Upon the termination of service in due compliance of the provisions of the Industrial Disputes Act, 1947 the workman Shri Patra accepted payment in full and final settlement of his dues including the amount of gratuity. It is further stated that deployment of Shri Patra as Driver was against temporary requirement and not against permanent requirement. It is further stated by the management Bank that since the earlier termination of the workman was set aside by this Tribunal in an earlier reference, he was reinstated with immediate effect as temporary/casual employee on no-work-no-pay basis as per finding of this Tribunal in that earlier reference and the quantum of daily wages as fixed by this Tribunal while awarding the earlier reference, the same was paid to the workman as full and final payment of his dues. It is also further stated that since the management Bank had no car to offer to the workman concerned, it has no other alternative but to retrench him and he was a single employee in the category and the designation of driver on daily wage basis was brought to the notice of the Secretary to the Govt. of India in compliance of the rules framed under the Industrial Disputes Act, 1947. The retrenchment compensation was calculated basing on the rate at which Shri Patra was getting his daily wage and paid to Shri Patra in terms of the provisions of the Act at the time of his termination and besides compensation, he was also paid with gratuity as per the Payment of Gratuity Act. It is further claimed that there cannot arise any occasion to question of entitlement of pay scale of Driver of the Bank since the nature of his employment was entirely casual and there was no vacancy in the post of permanent Driver under the management Bank and there is hardly any scope for alleging the scale of pay of Driver as wrongly claimed. It is further stated that since the retrenchment was effected in compliance of the provisions of the Industrial Disputes Act and so the question of failure to follow the procedure laid down in Section 25G of the Act has no basis since Shri Patra was the only person in the category of Driver on daily wage basis. It is finally claimed that in view of all

the incidents stated in the written statement of the management Bank, the present reference be treated as non-maintainable and retrenchment of the workman concerned may be treated as legal, valid and bona fide.

4. Rejoinder of the workman does not disclose any new story and played the role of repetition of the story made in the statement of claim and just it is reply and denial of the statement of the management in its written statement.

5. In the matter involving in the present reference there is checkered story. The workman concerned was previously retrenched once and the workman concerned raised an industrial dispute for his retrenchment without mandatory compliance as provided under Section 25F of the Industrial Dispute Act, 1947. The dispute was referred to this Tribunal and after hearing the respective parties, this Tribunal passed an Award in favour of the workman by declaring his retrenchment as illegal being devoid of mandatory compliance as provided under Section 25F of the Act and ordered for his reinstatement with back wages. On the basis of the said Award, the workman concerned was reinstated to the post from which he was retrenched and subsequently after few months he was retrenched again with the observation that since there was no vehicle of the management at the relevant point of time, requirement of the service of the workman concerned was no more needed by the management and his engagement was discontinued but in that case, an amount towards compensation was paid to the workman concerned. Over his such second retrenchment, the workman again raised an industrial dispute challenging his retrenchment and subsequently the said dispute was referred to this Tribunal, which is at present under consideration.

6. In course of his argument, Mr. M.S. Dutta, the learned Advocate for the workman concerned has submitted that even though the termination was followed on payment of compensation, the said act on the part of the management Bank does not cure the illegality in the process of termination of the present workman since the provision of Section 25G of the Act was not complied with. It is submitted by Mr. Dutta that the working principle "Last come first go" has not been followed at the time of termination of the present workman since there were some other workman junior to the present workman who were retained at the time of terminating the present workman. In this regard, Mr. Dutta principally relied upon the provision of Section 25G of the Act together with the provision of Rule 77 of the Industrial Disputes (Central) Rules, 1957. Mr. Dutta specially referred to the provision of Rule 77 where a statutory direction has been expressed for the performance on the part of the employer to prepare a list of workers in the same category according to their seniority and Mr. Dutta submitted that such a list was not prepared in respect of the present workman or displayed in the

Notice Board. Further, by referring to the provision of Section 25G of the Act Mr. Dutta submitted that in the case of retrenchment of a workman, if he belongs to a particular category of workman in the said establishment, in absence of any agreement in this behalf between the employer and the workman concerned, a mandatory provision has been made ordinarily to retrench the workman who was last person to be employed in that category though a provision has been made that such retrenchment without such compliance may be done for reasons to be recorded by the employer. According to Mr. Dutta such compliance according to Section 25G and Rule 77 has not been done by the management Bank at the time of retrenchment of the concerned workman for the second time.

7. Over a point raised by Mr. Arunava Ghosh, the Learned Advocate for the management Bank that the plea of non-compliance of Section 25G was not raised earlier, Mr. Dutta submitted that after termination of the present workman for the second time, he wrote a letter to the authority of the management Bank by raising the plea of non-compliance of Section 25G in the letter dated 1-3-2000 which is Ext. W-07 in the present reference and so, Mr. Dutta claimed, that the management Bank was aware that such a plea has been taken by the workman challenging his retrenchment and having such knowledge, the management Bank should have produced proper evidence to show that compliance of such provision has been made by the management at the time of retrenchment of the present workman. Mr. Dutta claimed that no evidence in that regard has been produced by the management Bank even thereafter.

8. In respect of compliance of preparation of list of workers in the same category as provided under Rule 77, Mr. Dutta submitted that the present workman, though was the only daily rated driver in the establishment of the management Bank, there were other drivers of permanent nature in the said establishment and for that reason a list of such workers being in the same category, should have been prepared. In this regard, Mr. Ghosh, the learned Advocate for the management Bank submitted that the vehicle which was being used by the Bank with the workman concerned as its daily rated Driver was the only vehicle of the Bank which was subsequently disposed of and for that reason the service of the present workman was not needed and so, he was retrenched with compensation. Mr. Ghosh submitted that the claim of existence of permanent drivers besides the workman in the establishment of the Bank, makes no basis since the Bank had no such Driver either permanent or temporary or daily rated basis since the drivers who were referred to by the workman concerned were the drivers of the personal cars of different officers of the Bank and they were never appointed or engaged by the Bank nor they had ever been paid wages or remuneration for their act as such Drivers.

In this regard, Mr. Ghosh referred to the oral statement of MW-1, Shri Tuhin Ranjan Chatterjee who has stated that Shri Dilip Das, Shri Pandey and Shri Pankaj were not employees of the Bank since these names were stated by the workman as WW-1 as the other drivers permanently employed by the Bank. In course of his cross-examination, the present workman as WW-1 has stated that the workman himself did not file any appointment letter of either Shri Dilip Das or of Shri Pandey to show that they were the drivers of the Bank nor he had any paper to show in that regard. He has further stated during his cross-examination that he had no knowledge as to whether these drivers were the personal drivers of the senior officers of the Bank. Mr. Ghosh submitted that the personal drivers of the officers of the Bank cannot be categorized as the drivers of the Bank since none of them were ever employed or engaged by the Bank nor they are being paid with their wages by the Bank itself and so the workman, Gada Patra and these drivers, Dilip Das, Shri Pandey and Shri Pankaj cannot be included in the same category for the purpose of preparation of seniority list as per provision of Rule 77. He has further submitted that, in consequence, the termination of the present workman cannot be said to be illegal for want of compliance of the provision of Section 25G of the Act since present workman was still a daily-rated driver of the management Bank at the time of his retrenchment.

9. Mr. Dutta, the Learned Advocate for the workman went on claiming the termination of the workman as illegal for non-compliance of provision of Section 25G as well as Rule 77 and relied upon several decisions as reported in 1992 LAB. I.C. 678 (General Manager, Southern Railway, New Delhi v. Judge, Central Government Industrial Tribunal & Another), 1983-II-LLJ 285 (PATNA) (Gaffar & Others v. Union of India & Others), 2004-III-LLJ 555 (Krishna Bahadur v. Purna Theatre & Others), 1960-I-LLJ 508 (Swadesamitran, Ltd. v. Their workmen) and 1966-II-LLJ 324 (SC) (Om Oil and Oil Seeds Exchange Ltd., Delhi v. Their workmen). I have gone through the said decisions in which the Hon'ble Courts held that non-compliance of provision of Rule 77 followed by retrenchment without following the provision of "Last come first go" makes retrenchment illegal. But, in the present reference it has already been found earlier that being alone workman in the category of daily wages driver, the requirement of preparation of such seniority list of the workman of the same category does not arise at all and as the workman was a single workman in that category, the compliance of the principle "Last come first go" does not arise at all.

10. Mr. Arunava Ghosh, the Learned Advocate for the management Bank submitted that though the present workman was reinstated in compliance to an Award passed by this Tribunal in an earlier reference, he was retrenched from service by a memo dated 4th February, 2000 and before

issuing such notice the workman concerned was paid with retrenchment compensation as per provision of Section 25F of the Act and three months wages were paid to him as abandoned precaution and in total the workman concerned was paid Rs. 86787.40 since the daily wages of the workman concerned was Rs. 89.60 at the time of his retrenchment.

11. In this regard some reference can be made in respect of the decision of the Hon'ble Apex Court on suo moto basis. In a decision reported in (2006) 11 S.C.C. 684 (Jaipur Development Authority v. Ram Sahai) the Hon'ble Court held that :

"Section 25G introduces the rule of 'last come first go'. It is not a rule which is imperative in nature. The said rule would be applicable when a workman belongs to a particular category of workman. An employer would, in terms thereof, be ordinarily required to retrench the workman who was the last person to be employed in that category. However, for reasons to be recorded, the employer may retrench any other workman."

12. In conclusion, I am of the opinion that the plea raised by the workman side about his protection from retrenchment for non-compliance of the provision of Section 25G and Rule 77 cannot be availed of in the circumstances as discussed in the previous paragraphs. It is not denied that the retrenchment for the second time was done by the management Bank on due compliance of the provision of Section 25F of the Act by way of payment of wages for three months and compensation and the workman side never agitated that he was paid with short amount. So, when the compliance of mandatory provision under Section 25F of the Act has been made and when the workman has no grievance to raise any complain under Section 25G of the Act and Rule 77, I think the workman concerned cannot claim his retrenchment as illegal. However, the management Bank is not needed to explain the reason for his retrenchment at the time of his retrenchment since the management Bank has complied with the mandatory provision thereto.

13. I am of the view that the action of the management Bank in terminating the service of the present workman, Shri Gadai Patra with effect from 8-2-2000 was just and fair and, consequently, the workman concerned is not entitled to any relief.

An Award is accordingly made.

Dated, Kolkata,
The 20th May, 2011

JUSTICE MANIK MOHAN SARKAR, Presiding Officer

नई दिल्ली, 15 जून, 2011

क. आ. 1833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 17/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/20/2004-आई आर(बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1833.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, which was received by the Central Government on 15-6-2011.

[No. L-12011/20/2004-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2004

PARTIES :

Employers in relation to the management of Central Bank of India

AND

Their Workman

PRESENT :

Mr. Justice Manik Mohan Sarkar, Presiding Officer

APPEARANCES :

On behalf of the Management : Mr. G. C. Chakraborty, Advocate

On behalf of the Workman : Mr. D. K. Chatterjee, General Secretary of the union

State : West Bengal Industry : Banking

10th May, 2011

AWARD

By Order No. L-12011/20/2004-IR (B-II) dated 31-5-2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India in terminating the services of Shri Rabindra Nath Maiti is legal and justified ? If not, what relief the concerned workman is entitled to ?”

2. In the written statement of claim, the workman has stated that he was permitted by the management Bank of Park Street Branch to work as a casual Peon-cum-Waterboy for supplying drinking water to staff members and customers of the Bank during 1993-94 and 1999-2000 and thus he has completed 240 days work in a calendar year/12 consecutive months from 21-10-1993 to 15-9-1994 totaling 264 days and from 26-6-1999 to 1-7-2000 for 299 days. The wage of the workman was Rs. 20 to Rs. 25 per day against vouchers prepared in the name of the workman Shri Maiti who used to receive payment by signing on the vouchers. Shri Maiti also performed duties of Peon in Savings Department and Current Account Department and also Cash Department in absence of permanent Peon and he used to be paid Rs. 20 to 25 per day to perform the duties of absentee Peon. It is further stated that in violation of Central Office Circular bearing No. CO/90/91/330 dated October 4, 1990, the workman was not paid the remuneration for Sundays and holidays. By giving no work to the workman concerned, the workman has claimed that the management has violated the provision of Section 25F of the Industrial Disputes Act, 1947.

3. In their written statement, the management of Central Bank of India, Kolkata has stated that the existence of employer – employee relation is necessary for an industrial dispute, but engagement of a person for carrying water purely on occasional basis on a fixed sum of money daily-rated amount of wages, does not result in relation of employer and employee and also the maintainability of this reference was challenged since no date has been mentioned as the date of effect. It is further stated that the workman Rabindra Nath Maiti was intermittently engaged as Waterboy for carrying water to the Bank and also to do some casual job of the Bank on a consolidated amount of Rs. 20 per day for certain period of time during Bank's working hours and such engagement was done during the calendar year 1993-94 and 1999-2000 and payment of wages was made through petty cash vouchers. As a policy matter, the Bank is to recruit a regular sub-staff through local Employment Exchange against any permanent vacancy after following certain procedure for recruitment and the

Branch Manager or any other official of any Branch had/has no power to appoint/engage any person against permanent vacancy without following the prescribed procedure to that effect and Shri Maiti was not appointed through any Employment Exchange or after following the prescribed procedure for appointment of such sub-staff.

4. A rejoinder was filed by the workman concerned and it contained denial para-wise of the statement made by the management Bank and also singing the same story as stated in his written statement of claim.

5. The plain question involved in the present reference is whether the concerned workman's service was illegally or unjustifiably terminated. The workman claimed that he was engaged as Waterboy-cum-Peon on daily rate of Rs. 20 in the year 1993-94 and 1999-2000 and thereafter he was illegally disengaged without following the mandatory provision of Section 25F of the Industrial Disputes Act, 1947 since he received no written notice of termination.

6. Denial of his engagement has been made on behalf of the management Bank as it has stated that the workman Shri Maiti was actually a canteen boy engaged by the canteen committee of the canteen in the Bank premises and he was asked to do some additional work of supplying water to the employees/staff of the Park Street Branch of the Bank and its customers and for that reason the Bank used to pay the said daily rate amount through vouchers. So two questions are to be decided here, (i) whether the Bank ever engaged the workman concerned directly as daily-rated/casual worker for the period as stated and admitted by both the sides. (ii) If the management Bank had ever engaged the workman concerned, whether he completed a period of 240 days of work in 12 calendar months during any of the period of his engagement.

7. Shri Rabindra Nath Maiti, the concerned workman deposed as WW-01 and he stated that he worked in the Park Street Branch of the management Bank as a Peon, initially during the period 18-10-1993 to 15-9-1994 and then again from 28-6-1999 to 1-7-2000 and he claimed that on both occasions he worked for more than 240 days and claimed that on the said score he was entitled to get reinstatement with full back wages. The workman has described his work as cleaning of tables and chairs of the Bank and to bring out ledgers from the almirah and he also used to serve water to the officers and other members of the staff and also to the customers. He also stated that he used to make over cheques to the cash counter and payment book to the Savings Deptt./C.D. Deptt. in course of his cross-examination this witness as WW-01 has stated that the Branch Manager initially engaged him for the work for supplying drinking water amongst the members of the staff canteen and that he was being paid for such work

and he identified one of such vouchers to that effect as Exhibit M-1.

8. On the other hand, the management has examined some of its officials as their witnesses being MW-01 to MW-04. Among them MW-01 stated that the Branch Manager has no power to appointment any member of the sub-staff and the present workman was working for serving water in the Bank's canteen and he denied the present worker to come to the category of temporary or casual worker under the Bank though he stated that the payment of daily-rated workers were being made by cash vouchers. During cross-examination this witness was controverted with Exhibit W-02 in which the present workman was described as Waterboy of the Park Street Branch and he was paid Rs. 20 per day for supplying drinking water to the staff members.

9. MW-02 one Sankar Mohan Banerjee stated in his evidence that during his tenure at Park Street Branch of the Bank as Assistant Branch Manager during the period 21-10-1993 to 15-3-1994 he found no sub-staff in the Bank in the name of Rabindra Nath Maiti or the present workman but he found the workman with this name along with another to work as a Canteen boy in the Bank's canteen which is separate from the Bank. He has further stated that the canteen has got no connection with the Bank as it was under a canteen committee, and that the present workman Shri Maiti at times was being called by the Park Street Branch of the Bank to work as daily-rated casual staff in absence of the regular sub-staff and in course of his cross-examination he admitted that the workman concerned was allowed to supply drinking water to the staff members of the Bank including the witness himself and the Branch Manager, though he could not remember what amount was being paid to the workman concerned for such work and this witness claimed that the Exhibit W-02 was not a Bank document since such type of papers are not prepared in the Bank and rather the said papers were the personal papers maintained by the concerned workman himself.

10. The deposition of MW-03, Soumitra Sur is of no help in the present matter as he was posted in the Park Street Branch during such period when the alleged working of the present workman as Waterboy did not happen as it was in between 1993-94 and 1999-2000 and so the deposition of Shri Sur will be of no help here.

11. In respect of the deposition of MW-04, Asim Kumar Nandi it is found that though the workman concerned has claimed that he was engaged by the Bank itself as casual worker on daily-rate wage basis, his attachment with the Bank was that of employer and employee, on the other hand, the management has claimed that he was never employed or engaged as a casual worker by the Bank but rather he was a Canteen boy along with others in the Bank's canteen in the Bank premises and his employer was the canteen committee.

12. It is submitted by the Ld. Advocate for the management Bank, Mr. G. C. Chakraborty that the workman concerned was requested to supply drinking water to the officers, staff and customers of the Park Street Branch of the Bank and a gratuitous amount of Rs. 20 per day was being paid to him since his original engagement was that of Canteenboy and it is stated that such work of supplying drinking water was treated to be an additional work besides his duty in the canteen.

13. On the other hand, the authorized representative of the workman union, Mr. D. K. Chatterjee submitted and claimed that the workman concerned was actually engaged as daily-rated worker under the management Bank itself which used to pay Rs. 20 per day for the work so done and he had worked for 240 days which qualified him to get the protection of mandatory provision under Section 25F of the Industrial Disputes Act, 1947 and since the said mandatory provisions were not complied with by the management Bank, his said termination was illegal and he is entitled to get reinstatement with back wages.

14. Unfortunately, no letter of termination or disengagement was issued to the workman concerned and he did the job during particular period on two occasions lastly till July, 2000. No specific date of such disengagement or termination has been alleged by the workman, nor has been stated from the side of the management Bank which practically denied his engagement by the Bank directly. Management Bank has claimed that the engagement of the workman concerned to supply water was in the style of an additional work besides his duty as a Canteenboy in the canteen of the canteen committee in the Bank premises and the said engagement will not qualify the workman to get the benefit of Section 25F of the Act in any way and since for the engagement and disengagement of the workman concerned, the management Bank has not played any role.

15. In respect of the documentary evidence the workman has relied on the copies of the office circulars of the management Bank in respect of temporary employees of the Bank besides payment vouchers to the workman concerned. Practically the workman concerned has failed to prove that he was never a Canteenboy in the canteen of the Bank engaged by the canteen committee but he was directly engaged by the Bank to do the work of casual Waterboy-cum-Peon and he did many other works besides the particular job of Waterboy. In this context a decision may be referred as reported in (2005) 8 S.C.C. 481 (Batala Co-op. Sugar Mills Ltd. v. Sawran Singh) wherein the Hon'ble Apex Court held that :

“Materials on record clearly establish that the engagement of the workman was for a specific period and specific work. Since the workman was engaged

on casual basis on daily wages for specific work and for specific period, the workman cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(o) of the Act. Hence the direction to reinstate the workman with 50% of the back wages granted by the Labour Court and the High Court cannot be maintained."

16. In view of the above decision, it is found that the present workman was asked by the Bank to supply drinking water to the officers, staff and customers of the Bank at its Park Street Branch daily and for that reason an amount of Rs. 20 was being paid to him and the workman himself never denied that he worked as Waterboy in the said branch of the Bank though he claimed that he also did other kinds of jobs which are normally done by a Peon or sub-staff of the Bank and therefore it is revealed that the workman concerned was never a permanent or temporary employee of the Bank duly engaged by the Bank by following the recruitment procedure of the Bank. The workman concerned could not prove that he did other jobs of Peon or a sub-staff besides his work as a Waterboy.

17. In view of the discussions made above, I am of the view that having such circumstances of his engagement at Waterboy being a particular work, the workman concerned cannot claim protection under Section 25F of the Act and since discontinuation of the work to supply drinking water cannot be said to be an act of termination by the management Bank, no question arises to call the said discontinuation as illegal and unjustified and so the present workman cannot claim any relief in the present reference.

An Award is passed accordingly.

Dated, Kolkata,

the 10th May, 2011

JUSTICE MANIK MOHAN SARKAR, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्र. आ. 1834.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 173/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/39/1998-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1834,—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 173/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/39/1998-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, JJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 173 of 98

BETWEEN

Shri Ram Prakash, C/o. B. P. Saxena, 426, Block-II, Vasant Vihar, Kanpur

AND

The Assistant General Manager, Bank of India, 1, Naval Kishore Road, Lucknow

AWARD

1. Central Government MoL New Delhi vide Notification No. L-12012/39/98-IR (B-II) dated 9-10-1998, has referred the following dispute for adjudication to this Tribunal.

2. Whether the action of the management of Bank of India in dismissing the services of Shri Ram Prakash with effect from 10-1-1997 is legal and justified? If not, to what relief the said workman is entitled?

3. Brief facts are:

4. It is an admitted fact that Sri Ram Prakash was employed as Clerk-cum-Cashier in Bank of India at its Mohammadabad Branch in District Farrukhabad. It is alleged that the applicant being a candidate of Scheduled Caste and he was posted at a village branch, he was disliked and despised by other members of the staff and the staff of the Regional Office, Agra, who wanted to oust him from service. In this background a conspiracy was hatched against the applicant and he was served with a charge sheet dated 18-1-1996 by the Disciplinary Authority Agra of the bank containing false charges. The day the charge sheet was issued, the disciplinary authority appointed Sri Likma Ram as enquiry officer and Sri P. Goel as Presenting Officer. In the charge sheet the applicant

was charged for not depositing Rs. 7000 in the bank and misappropriating bank money with mala fide intention. Enquiry Officer commenced the enquiry on 12-2-1996 and concluded the same on 5-8-1996. That though a detailed show was staged to establish that the inquiry was conducted fairly and properly. Yet every care was taken by the upper caste employee to ensure that no competent defence representative was available to the claimant who could have helped and guided the claimant in conduct of the inquiry. Thus under the circumstances though the applicant was although present in the inquiry but a perusal of the inquiry proceeding will show that in fact it was an ex-parte inquiry proceedings. After concluding the inquiry proceeding the enquiry officer submitted his findings to the Regional Manager/Disciplinary Authority who issued a show cause notice dated 7-10-1996 to the applicant proposing the punishment of (Dismissal without notice). The disciplinary authority proposed the punishment without even the accepting the findings of the Enquiry Officer. This proved the bias and prejudice as also the predetermine mind of the said authority. Thereafter the disciplinary authority ultimately inflicted the proposed punishment of dismissal upon the applicant. Applicant being aggrieved submitted an appeal to the appellate authority which was also rejected by the Zonal Manager U.P. Zone. Thereafter the applicant raised an industrial dispute.

5. That the applicant has also assailed the action of the opposite party bank inter-alia on the following grounds :

6. That the disciplinary authority and the appellate authority have not been appointed in accordance with paragraph 19.14 of Bipartite Settlement dated 19-10-66, the charge sheet is invalid; therefore, the appointment of the enquiry officer is invalid along with the proceedings and also the findings; the punishment inflicted in unjustified and illegal and also the order of the appellate authority. It is alleged that the applicant was not at all familiar with the process of inquiry and was therefore, remained a silent spectator of the inquiry proceedings; the enquiry officer failed to act in the manner desired on the following points.

7. In charge No. 1 it is stated that the applicant received Rs. 5000 in cash from the Munim of Sri Mithlesh Kumar Yadav. It shows that Sri Mithlesh Kumar Yadav had not come to deposit the money still the inquiry officer accepted the statement of Sri Yadav, without seeking identification from for the applicant. In reference to Ext. M.E. 2 it is stated that Sri Mithlesh Kumar Yadav had got deposited Rs. 5000 in his account. In the last line of the said exhibit it is written that he had not got, its scroll before the deposit of Rs. 5000. This exhibit is very cleverly worded. In such a situation it was the Munim who could tell as to whom he gave the money for deposit or pocketed

it himself, whereas Munim was not produced as a witness. With regard to charge No. 2 there is no other evidence on record of the inquiry proceedings except exhibit ME-3 and ME-4. A perusal of Ext. ME 3 will show that it is a letter of the alleged brother of Kumari Anita Devi-the account holder on the reverse of ME-3 the writer has given his name as Prem Chandra Singh Yadav thus ME-3 is not a complaint from the account holder that is Kumari Anita Devi. Further this document was neither proved in the court of inquiry nor the writer thereof was produced as a witness. These serious infirmities escaped the attention of enquiry officer.

8. Further in exhibit ME-3 the writer of the letter has written that Kumari Anita Devi is his sister on reverse side of ME-3 the address of Anita Devi is given which show that she is married. This infirmity needed a probe. In connection with the identification of signature initials on Ext. ME-4 and ME-5 it is the clerk on scroll duty Sri Mukesh Sharma MW-3 who is in his statement has identified that the same are the signature of the applicant. In his statement Ext. ME-3 this witness an answer to the question answered that he did not recognized his initials but he did recognize his signature. He further stated that the signature on ME-4 and ME-5 appear to be of Ram Parkash. This a manifest difference in the statement of MW-3 which shows that he is a tutored witness. It is significant that at the alleged time the applicant was working in cash section, it was the cashier incharge Sri Rakesh Kumar Jain M.W. 2 who is supposed to be conversant with my signature and initial. This witness has been silent in identifying his signature/initials on ME-4 and ME-5. This serious infirmity too has been ignored by the enquiry officer.

9. There was flagrant denial of natural justice to the claimant in the course of inquiry. In this connection reference is made to Ext. ME-15 and ME-16. These statements were recorded in the course of investigation caused in the matter. Since only these two papers were filed and the preliminary investigation report was not brought on the record of enquiry proceeding, the inquiry conducted cannot be said to be fair and proper.

10. Therefore, in view of the foregoing grounds, the inquiry conducted was not fair and just and the order of dismissal passed was illegal. Therefore, the applicant has prayed that he be reinstated with back wages and all consequential benefits.

11. Opposite party has filed the written statement. They have alleged that the claimant while working as receiving cashier at banks Mohamdabad Branch, had received Rs. 5000/- in cash for depositing in OD account of Sri Mithlesh Kumar Yadav on 15-04-95. He had issued counter foil to the customer in token of the deposit of the amount and misappropriated the money. He had also received cash of Rs. 2000/- on 3-5-95, for depositing in

Saving Bank Account of Kumari Anita Devi. This amount was also mis-appropriated by him. To hide his manipulations he had destroyed the pay in slip (bank's copy/record) with an ulterior motive. Though the money so received by the claimant was not actually deposited by him with the bank but since he had issued the depositor the counterfoils under his signature with branch seal, the bank being principal had to incur liability for the acts of agent (claimant herein), the bank had to pay Rs. 6329.73 paise to Sri Mithlesh Kumar and Rs. 2171 to Kumari Anita Devi. Thus the bank was made to suffer loss of Rs. 8500.73 due to the misconduct on the part of the claimant. Looking to the gravity of alleged misconduct, claimant was placed under suspension pending initiation of departmental inquiry. Thereafter he was issued charge sheet dated 18-1-96 in connection with the acts of misconduct committed by him. A departmental inquiry followed on the conclusion of which the inquiry officer had submitted his report dated 28-08-96 holding the charges levelled in the charge sheet as proved. Thereafter a show cause punishment notice dated 7-10-96 was issued by the disciplinary authority granting a personal hearing to the claimant on the inquiry findings as also on the proposed punishment of dismissal without notice. Despite repeated adjournment granted at the request of the claimant he had not turned up for the personal hearing and ultimately the disciplinary authority passed the punishment order dated 10-01-97 imposing the punishment of dismissal from the bank service without notice on the claimant. Against the punishment order the claimant preferred an appeal. He was given a personal hearing by the appellate authority on 15-4-97. Claimant participated in the personal hearing and thereafter submitted a written submission. As there was no merit in the appeal preferred by the claimant his appeal was rejected by the appellate authority by passing order dated 15-5-97.

12. Bank has emphatically denied the allegation that the claimant was victimized because he belongs to scheduled caste, claiming that there are a number of employees in the bank belonging to scheduled caste. There is no illegality in ordering simultaneously with issuance of charge sheet. In the inquiry held in the matter full and fair opportunity was given to the claimant to defend himself. Even when the claimant failed to cross-examine the management witness and did not produce his evidence, inquiry was reopened after its conclusion to give him further chance to cross-examine the management witnesses and produce his evidence, by the claimant did not choose second time also to cross-examine the witnesses. It is stated that all reasonable opportunity was given to him to bring his defence representative to defend him in the inquiry, but he did not bring. The claimant has fully participated in the inquiry and was at liberty to cross-examine the witnesses and lead his evidence. Therefore, proceedings cannot be said to be ex-parte

proceedings. The claimant was issued show cause notice dated 7-10-96 wherein the inquiry report was proposed to be accepted and based on the finding punishment of dismissal was proposed. Through show cause punishment notice he was given an opportunity to submit representative on the inquiry finding and proposed punishment. The proposed punishment was based on the inquiry finding. The claimant was free to represent on both the inquiry finding and the proposed punishment. He was afforded the opportunity of personal hearing on several dates but he did not participate, ultimately the final order was passed in the matter. It is wrong to say that the management had any predetermination. Claimant has not shown how the disciplinary authority and the appellate authority were not appointed in accordance with para 19.14 of the BPS. Their appointment was as per provision of BPS. Therefore, issuance of charge sheet, appointment of inquiry officer, inquiry proceedings, inquiry findings and the punishment imposed on the applicant are perfectly legal and valid. It is stated that the claimant attended all the inquiry proceedings so now he cannot blame the bank that he remained mute spectator. The charges were quite simple and relating to banking transaction and to which the claimant was very much familiar. He could have easily cross-examined the management witness. This shows his guilt. Had he been innocent he would have definitely cross-examined the witnesses. In the inquiry Sri Mithlesh Kumar Yadav M.W. 1 an outsider customer had deposed that he had given Rs. 5000 to the applicant on 15-4-95 for depositing in his OD Account which was duly received by the claimant against his signature and stamp on the counterfoil. The signature of the claimant on the counterfoil had been identified by Sri Mukesh Sharma Clerk MW-3 and Sri A. Tondon Manager MW-4. However, in the charge sheet it was erroneously mentioned that the money was got deposited by the Munim of Sri Yadav but that does not nullify the charges of misappropriation of money by the claimant. It is stated that in relation to para no. 13(2.c) that the account holder being Indian Lady had not come in the inquiry for obvious reasons. On her behalf her brother had complained. Her brother could not be produced by the presenting officer despite best efforts. They being outsider, bank had no control over them and cannot compel their production. However, M.W. 4 the Manager had confirmed that the complaint ME-3 was received by him and also its contents. ME-3 and MW-4 have confirmed the signature of the applicant on the counter foil ME-4 of the pay-in-slip through which money Rs. 2000 was deposited in the account of Kumari Anita Devi. It is stated that the signature appearing on the counter foil of deposit receipts which have been marked ME-1 and ME-4 have been identified to be the signature of the claimant not only by Sri Mukesh Sharma Clerk M.W. 3 but also by A. Tondon Manager M.W. 4. Both of them were his colleagues and it is natural for them to know the signature of the claimant. Therefore, it is wrong

to say that only the cashier in charge could have identified his signature. Other colleagues including the manager could identify the signature.

13. It is stated that if preliminary investigation report before the inquiry officer has not been produced it has not caused any prejudice to the claimant because the inquiry officer has not placed any reliance upon such a report.

14. Therefore, they have prayed that they have conducted the inquiry in a fair and just manner and in the interest of society and public in general it would not be justified to reinstate such person in the bank or to grant any relief.

15. Claimant has also filed rejoinder but therein nothing new has been pleaded except reiterating the facts already pleaded.

16. Both the parties have filed oral as well as documentary evidence.

17. Claimant has filed copy of Bank of India Zonal Office letter dated 18-9-97 addressed to ALC Kanpur. Claimant has also filed 9 documents which are original of suspension order, Ext. 1, Original of order appointing presenting officer Ext. W-2, original of order appointing enquiry officer Ext. W-3, original of charge sheet dated 18-1-96 Ext. W-4, original of letter dated 18-1-96 with which the charge sheet was enclosed Ext. W-5, original of show cause punishment notice Ext. W-6, original of punishment order dated 10-1-97 Ext. W-7, original of appellate order Ext. W-8, original of Bank of India letter 25-3-97 Ext. W-9.

18. Opposite party has not contradicted any of these documents.

19. Opposite party has also filed all the original documents pertaining to inquiry vide list dated 15-5-97. These documents are complaint of Mithlesh Kumar, complaint letter of Sri Prem Chandra Singh, suspension order, letter dated 18-1-96, charge sheet, appointment of inquiry officer along with presenting officer, order sheet dated 12-2-96 page 5, list of documents and witnesses 12-2-96, order sheet dated 26-2-96, 20-3-96, written brief of presenting officer, order sheet 9-1 to 15, evidence sheet, management exhibits in inquiry proceedings, inquiry report, show cause notice, letter of Sri Ram Prakash, notice of personal hearing on several dates along with letter of Ram Prakash, punishment order, appeal of Sri Ram Prakash, letter dated 2-4-97, proceeding of personal hearing dated 15-4-97 and appellate order dated 15-5-97.

20. Opposite party has also filed original documents vide application dated 22-10-2010 which include statement of Rakesh Kumar Jain and statement of Mukesh Sharma in original, photocopy of CD/Account over draft ledger relating to Mithlesh Kumar are already filed and exhibited

and the original register will be produced during arguments, notice of personal hearing, letter of Ram Prakash.

21. Whereas workman has examined himself as witness W.W. 1, management has examined Sri Likme Ram Senior Manager Bank of India as M.W. 2.

22. Heard and perused the record thoroughly.

23. The first point to be determined in this case is whether the domestic inquiry conducted by the inquiry officer against the delinquent employee is just and legal.

24. The first contention taken by the authorized representative for the claimant taken in the claim being scheduled caste category so other employees and staff were prejudice so he could not find the proper help during the inquiry. I have gone through this aspect. First of all the claimant has not stated even a single word in his statement regarding such type of allegation. Opposite party has thoroughly refuted the same saying that there are number of employees who also belong to S.C. category working in the bank.

25. Therefore, there is no force in this contention and it was undesirable, raising such a plea in the 21st Century that too without base.

26. Main stress has been given by the authorized representative for the claimant is that the original counter foil of the pay in slip has not been produced by the management before the enquiry officer as well as tribunal. Opposite party has refuted this contention saying that the counter foil of pay in slip in original were produced before the enquiry officer and claimant was also present when the original record was produced and he was permitted to inspect the record. Moreover Ext. M-1 is the counter foil of pay in slip of Rs. 5000 of OD Account of Sri Mithlesh Kumar Yadav. Similarly Ext. ME-4 is the counter foil of pay in slip of Rs. 2000 in the account of Kumari Anita Devi.

27. I have given due thought to the contention of the claimant and I find that there is no force. Though my learned predecessor considering the fact at that time has ordered the management to file the original of the counter foil of the pay in slip.

28. A.R. of the opposite party has prayed that at present the original of the counter foils are not traceable. The matter being old, the counter foils were in the custody of complainant like Mithlesh Kumar Yadav.

29. Opposite party has filed an affidavit of Sri Sanjeev Singh who is the Chief Manager of the bank which is paper No. 37/1 saying that the counter foils are not traceable. In fact it belongs to the banks customer Sri Mithlesh Kumar Yadav.

30. In my view also when the originals of the counter foils were produced before the inquiry officer and the witnesses have stated and proved those original counter foils, now raising such a point is of no help to the claimant. It is just finding out the loopholes.

31. It has been contended by the authorized representative for the claimant that Munim of Sri Mithlesh Kumar Yadav was not produced before the enquiry officer. In this respect the opposite party has specifically clarified in their written statement that the wording in charge No. 1, were wrongly typed. The charge No. 1 is like this "On 15-4-95 you (CSE) received Rs. 5000 in cash from the Munim of Sri Mithlesh Kumar Yadav for depositing in his OD Account".

32. Opposite party in their contention as well as in the written statement has submitted that the word Munim was wrongly typed in the charge sheet. Opposite party has recorded the statement of Sri Mithlesh Kumar Yadav. A detailed statement of Sri Mithlesh Kumar Yadav is on the file. I have examined the statement which is on page No. 29/30-31 wherein he has specifically stated that he has given Rupees 5000 to the bank cashier Sri Ram Prakash. He has obtained a counter foil of pay in slip of Rs. 5000 from Sri Ram Prakash who has put in his signature and Ext. ME-1 is that counter foil. This statement was given by him before the enquiry officer.

33. Enquiry Officer was stressing all the time to the CSE that he could cross examine the witnesses, he could tell the name of his defence representative. But the CSE did not tell the name of his DR though he remained present during all the proceedings. He himself did not cross examine the witnesses. At least he could have said before the witness that the signature on the counter foil is not his but he did not whispered even a single word before the inquiry officer.

34. Therefore, the contention of the claimant that he remained as moot spectator during the course of disciplinary enquiry cannot be accepted because the opposite party contended that he is a literate person. Why the workman remained silent spectator during the enquiry, no reasonable explanation has been advanced by him before the tribunal.

35. Therefore, the tribunal is not in agreement with the contention of the authorized representative for the claimant that no appropriate opportunity of his defence was given to him by the enquiry officer during the course of conduct of enquiry.

36. The opposite party has produced the enquiry officer Sri Likma Ram as M.W.1. He stated that he has conducted the enquiry in a fair and just manner. Enquiry proceeding in original has been filed. During enquiry proceedings CSE remained present. He further stated on

oath before the Tribunal that he offered every opportunity of the defence to the workman. All the original documents were produced and he recorded the statement of witnesses in the presence of the CSE and the CSE was permitted to cross examine the witnesses. CSE was also permitted to examine oral or documentary evidence but he did file any evidence in his defence. After concluding the enquiry he prepared his enquiry report based on the appreciation of material and evidence available on the enquiry file and submitted the same to the disciplinary authority who before the passing of dismissal has given a notice of personal hearing to the CSE.

37. Therefore, the contention raised by the claimant that the disciplinary authority proposed the punishment without even accepting the finding of the enquiry officer is held to be without force. Punishment order itself speaks the details of the show cause notice. The disciplinary authority has adjourned the proceedings of personal hearing on several dates on the request of the CSE. In the last when the CSE did not appear the disciplinary authority found that the CSE appears that he is stalling the personal hearing on fictitious grounds. No written representation was submitted against the proposed punishment. In the end the disciplinary authority has concluded—I hereby confirm and impose upon you that the punishment of dismissal from bank's service without notice.

38. I have also examined the statement of W.W. 1 who admitted in the cross-examination that he was given the opportunity to bring the defence representative by the enquiry officer from the very beginning. He has stated that he will bring the representative on the next date but he could not bring. He also admitted that before passing the punishment order he was summoned for personal hearing.

39. Therefore, I have considered all the facts and circumstances of the case, it cannot be said it was an ex-parte enquiry.

40. Therefore, considering all the facts and circumstances of the case I am of the view that the management has been able to prove that the enquiry conducted by the enquiry officer against the delinquent employee was just and fair and there was no mala fide or bias on the part of the enquiry officer.

41. Now having concluded that the domestic inquiry conducted by the management against the delinquent employee was just fair and proper, it will be seen if the punishment awarded to the employee concerned commensurate with the gravity of the charges. Here I would like to emphasize that the banking industry is a financial institution run at the confidence of public at large and if the person like the present workman is shown any kind of sympathy who has admittedly misappropriated the banks fund it would not be proper in the interest of

public at large to reinstate him in the service of the bank or to interfere with the decision already taken by the disciplinary authority.

42. Therefore, it is held that the punishment of dismissal without notice awarded to the workman is wholly just and fair and need not to be changed at the hands of this tribunal in exercise of powers conferred upon it under Section 11-A of the Industrial Disputes Act.

43. For the reasons and discussions made herein above, it is held that the action of the management in dismissing the workman from service without notice is held to be just and legal. Consequently the workman is not entitled for any relief.

44. Reference is therefore, answered in favour of the management and against the workman.

RAM PARKASH, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1835.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/32/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/233/1999-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1835.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/32/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/233/1999-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/32/2000

Shri Mohd. Shakir Hasan, Presiding Officer

Shri Ramchandra Godbole,
S/o Y. Godbole, H. No. 332-J,
Janata Colony,
Near Asha Niketan, E/6,
Arera Colony, Bhopal

... Workman

Versus

Asstt. General Manager,
UCO Bank, Regional Office,
E-5, Arera Colony, Bhopal

... Management

AWARD

Passed on this 12th day of May, 2011

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/233/99/IR (B-II) dated 14-1-2000 has referred the following dispute for adjudication by this tribunal :

"Whether the action of the management of UCO Bank in terminating the services of Shri Ramchandra Godbole S/o. Yadavrao Godbole w.e.f. 10-5-97 is justified? If not, to what relief the workman is entitled for?"

2. The case of the workman in short is that the workman Ram Chander Godbole was engaged as Daily wages employee against the post of peon on 3-8-88 and worked continuously for nine years on the vacant post of the peon. He was stopped from work on 10-5-97. It is stated that before terminating him from service, no notice was served nor any retrenchment compensation was paid in violation of Section 25 of the Industrial Disputes Act, 1947 (in short the Act, 1947). It is stated that there was circular of the Bank in view of the settlement with the Union to regularize the daily wages employee. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that the workman was admittedly engaged as casual labour on daily wages basis by the Branch Manager. The daily wages is engaged on the basis of contract lasting for a day only and each engagement is a fresh one as per need of the Bank. It is stated that admittedly there was circular for absorption and empanelment of daily wages. It is stated that the workman had deliberately dissuaded himself from his lawful empanelment and absorption when opportunity for the same was made available to him. It is stated that there is no violation of the Act, 1947. It is submitted that the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties the following issues are for adjudication :

(i) Whether the action of the management in terminating the service of the workman w.e.f. 10-5-97 is justified?

(ii) To what relief the workman is entitled?

5. Issue No. 1

According to the workman, he was working continuously for nine years whereas the management contention is that he worked intermittently as casual labour on daily wages as per need of the Bank. However it is an admitted fact that he was engaged on daily wages as casual labour. It is also admitted that he was disengaged on 10-5-97. It is also admitted that no notice and no retrenchment compensation was paid at the time of disengagement.

6. The workman has adduced oral and documentary evidence. The workman has adduced two witnesses including himself. The witness of the workman Shri Amitabh Chatterjee has stated in his evidence that he was also working in the said Branch since 1993. The workman Ramchander Godbole was working there as a peon and he worked since October 1993 till May 1993 as a peon. There is no cross-examination. The order dated 4-9-2001 shows that he was discharged. His evidence clearly shows that the workman was working continuously till his disengagement. This itself shows that he worked continuously for more than 240 days preceding the date with reference under the provision of Section 25B of the Act, 1947. The workman Ramchander Godbole has also supported his case. He has stated that he was engaged on 5-8-89 and worked continuously till 10-5-97. He received his wages weekly. He has stated that he has filed paper which is P-4 to show his continuous engagement. This paper shows that Chief Manager, Habibganj Branch sent information to Zonal Office on 31-12-93 about the casual workers working in his branch. This shows that Ramchander Godbole was engaged on 5-8-89 and was working as casual worker.

7. The workman has filed documents which are marked as P/1 to P/8. These documents are not specifically denied by the management nor any document is filed in its rebuttal though the management was directed by the then Tribunal vide order dated 17-5-05. The paper P/1 and P/2 are the circular regarding procedure for empanelling casual workers for absorption. These circulars dated 19-10-89 and 31-3-90 appear to be not applicable as on the cut out date, the workman had not completed 240 days.

8. P/3 is the letter No. ZO/PAD/261/93-94 dated 1-2-94 addressed to Zonal Office, Bhopal by Chief Manager, Habibganj, Bhopal. This letter shows that three casual workers including Ramchander Godbole were on daily wages and are continuing without break since more than 3 to 6 years. The only objection raised by the

management that it is a typed copy and there is no signature of the Chief Manager. There is no denial in the evidence of the management that no such letter was issued by the management which shows the continuous engagement of the workman. Admittedly the original letter is in possession of the management. The management had been given chance to rebut the document but the management has intentionally concealed the document to mislead the Court.

9. Another document is P/5. This is also letter No. DO/BHOP/218/96-97 dated 1-8-96 written by the Chief Manager, Habibganj Branch to Divisional Manager, UCO Bank, Bhopal. This letter is also not denied by the management, nor any other document is filed to rebut this document. The management witness Shri B.B. Nanda has rather admitted this document in his evidence. He has stated that at best these are mere official inter departmental correspondence of routine nature. He has stated that similarly in Exhibit No. P/5 "assessment of need based requirement of sub staff" dated 1-8-96 in para-5 there is a specific mention "it is not verifiable as to whose place they were engaged." It is a settled principle that any document is not taken in evidence in part and it is to be taken as a whole. This letter clearly also shows that three casual workers including the workman were working on casual basis till the issuance of the letter and the Chief Manager had sought instructions to replace daily wagers. This letter goes to show that the workman was in continuous engagement till the issuance of the letter.

10. Likewise the workman has filed copy of the representation dated 5-6-96 which is P/6 whereby the workman and two others represented for regularization. This documents is also not denied by the management witness. P/8 is the another letter No. DM/PAD/4/97-98 dated 6-5-97 whereby the Senior Manager, Habibganj informed the Divisional Office for retaining to casual workers till a permanent solution. This letter clearly shows that after this letter the workman was admittedly disengaged on 10-5-97. Thus the oral and documentary evidence establish the case of the workman that he was engaged on 5-8-89 and worked continuously till 10-5-97 without any break. This shows that he was in continuous employment with Bank as has provided under Section 25(B)(1) of the Act, 1947.

11. On the other hand, the management has also adduced oral and documentary evidence. Now let us examine the evidence of the management. The management witness Shri B.B. Nanda has admitted in his evidence that the workman was disengaged on 10-5-97. He has stated at para-5 that Chief Officer, UCO Bank, Bhopal filed an affidavit before the Hon'ble High Court, Jabalpur in W.P. No.3008/98. The management has filed copy of the affidavit filed in W.P. No.3008/98 which is paper No. 5/5. The copy of the affidavit shows that it was

executed on 3-4-1998. In the said affidavit, the Chief Officer, UCO Bank had admitted that the workman Ram Chander Godbole was working since 5-8-89 as casual worker alongwith other workers. He was not empanelled because on the date of settlement i.e. on 19-10-89, he has not completed 240 days which was cut out date in the circular. However this affidavit establishes that the workman was working since 5-8-89 and was admittedly terminated on 10-5-97. Thus the evidence of the management also supports the case of the workman and it is evident that the workman was working without break till his termination.

12. This is not a case that the workman was entitled for absorption. Rather the case is that the action of the management in terminating the service of the workman w.e.f. 10-5-97 is not justified. As discussed above, it is clear that he worked continuously as casual worker till his termination on 10-5-97. It is an admitted fact that no notice and retrenchment compensation was given to the workman in compliance of Section 25-F of the Act, 1947. Since his service appears to be continuous for about eight years, his termination without complying the provision of Section 25F of the Act, 1947 is not justified. This issue is decided in favour of the workman and against the management.

Issue No. II

13. On the basis of discussion made above, it is evident that the action of the management was not justified. The management is directed to reinstate the workman with full back wages within two months from the date of award. Accordingly, the reference is answered.

14. In the result, the award is passed without any order to costs.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्र. आ. 1836.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियन्टल इश्योरेंस कं. लि. चौथी मंजिल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 241/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-17012/27/1998-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1836.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 241/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the industrial dispute between the management of Oriental Insurance Co. Ltd., 4th Floor, Alok and their workmen, which was received by the Central Government on 15-6-2011.

[No. L-17012/27/1998-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESHWAR

PRESENT:

Shri J. Srivastava, Presiding Officer
C.G.I.T.-cum-Labour Court, Bhubaneswar

TR. INDUSTRIAL DISPUTE CASE NO. 241/2001

Date of Passing Award – 30th May, 2011

BETWEEN:

The Management of the Regional Manager,
Oriental Insurance Company Limited,
4th Floor Alok Bharati Towers,
Sahidnagar, Bhubaneswar-751 007.

... 1st Party-Management

AND

Their workman Shri Dinabandhu Naik,
Ex-Sweeper-cum-Caretaker,
Oriental Insurance Company Limited,
At Harachandi Sahi,
Near Paranolia Sahi,
P.O. Puri, Distt. Puri

... 2nd Party-Workman

APPEARANCES:

Nqne : For the 1st Party-Management

M/s. Laxmidhar Dash : For the 2nd Party-Workman
and Associates,
Advocate

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Oriental Insurance Company Ltd. and its workman Shri Dinabandhu Naik, Ex-Sweeper-cum-Caretaker in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section

(2A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-17012/27/98-IR-(B-II), dated 31st March, 1999.

2. The dispute as referred to has been given under the schedule of the letter of reference which is quoted below :

"Whether the action of the management of Oriental Insurance Company Ltd., in terminating Shri Dinabandhu Naik from services is legal and justified? If not, what relief the disputant is entitled to?"

3. Pursuant to the letter of reference the 2nd party-workman has filed his statement of claim and stated that he joined in the Oriental Insurance Company Limited, Puri Branch on 8-11-1990 on the post of sub-staff-cum-sweeper on daily wages for a period of 85 days and continued in his job till 31-1-1991. He used to work from 6 A.M. to 6 P.M. though he was appointed as a part time sweeper. He was not paid his wages for the period of his employment from 8-11-1990 to 31-1-1991. He was removed from service on 1-2-1991 without any written order and without communicating any ground thereof. He was further employed in Holiday home as care taker in addition to his duties of sweeper from 1-4-1992 to 11-1-1994 and thereafter terminated without any written order or any compensation. Thus he had put in 731 days of temporary service during the period from 1990 to 1994. In response to an advertisement in local daily "Samaj" dated 8-6-1995 regarding filling up of post of caretaker, he was not given employment. He raised a dispute before the Assistant Labour Commissioner (Central), but the conciliation proceeding ended in failure and thus the dispute was referred to this Tribunal for adjudication. His termination is in violation of provisions of Section 25(F) and (H) of the Industrial Disputes Act. Several other temporary employees were engaged after termination of his service. Therefore, he be given relief of re-employment and the Management be asked to regularize his service in permanent cadre.

4. The 1st Party-Management has averred in his written statement that the 2nd Party-workman had worked with the 1st Party-Management as a parttime sweeper with effect from 8-11-1992 to 31-1-1994 for the time 9.15 A.M. to 11.45 A.M. only and was paid wages of Rs. 225 per month. The 2nd Party-workman had never worked beyond the above period and timing. No written order for terminating the services of the 2nd Party-workman is required as per guideline of the 1st Party-Management as the 2nd Party-workman was not a regular employee of the 1st Party-Management. The question of payment of dearness allowance does not arise at all. He was never appointed as caretaker of Holiday home at Puri. The Holiday home at Puri is maintained by M/s. oriental Insurance Employee Welfare Society and the caretaking

job of the said Holiday home was given on contract basis. The period for which the 2nd Party-workman claims to have worked as care taker of Holiday home, one Jagdish Singh was working as a contractor and taking care of the Holiday home. The 1st party-Management has never engaged the 2nd Party-workman as caretaker of the Holiday home. When the post of care taker fell vacant the 1st Party-Management advertised for the said post. Nothing prevented the 2nd Party-workman to apply for the said post. The 2nd Party-workman was never appointed as a regular employee. He only worked as a part time sweeper. He was removed after giving due consideration of his grievances. Sections 25-F and 25-H of the Industrial Disputes Act, 1947 are not applicable in the case of the 2nd Party-workman and no amount is payable to him on any account.

5. In his rejoinder the 2nd Party-workman has submitted that he was working as a sub-staff employee from 11.45 A.M. after his duty of sweeper. He used to close the office and handover the keys to the authority. The Holiday home at Puri is under the control of the 1st Party-Management and the employees working therein are being paid from the funds contributed by the employees and also grants from the 1st Party-Management. So for all practical purposes it comes under 1st Party-Management.

6. On the pleadings of the parties following issues were framed :

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Oriental Insurance Company Limited in terminating Shri Dinabandhu Naik from services is legal and justified?
3. If not, to what relief the disputant is entitled?
7. The 1st party-Management did not appear in the case since 4-12-2006. A notice was sent to the 1st Party-Management on 9-4-2010 but it preferred to remain absent. Hence the case was ordered to proceed ex parte against the 1st Party-Management vide order dated 11-5-2010.

8. The 2nd Party-workman Shri Dinabandhu Naik has filed ex-parte evidence through affidavit and additional affidavit of himself and certain documents.

FINDINGS

ISSUE NO. 1

9. No plea has been taken by the 1st Party-Management regarding non-maintainability of the reference. As such this issue has been framed redundantly without any pleadings. Although it requires to be struck

off but since framed it is answered in the negative as the 2nd Party-workman claims himself to be "workman" and he certainly falls within the definition of "workman". Hence it is held that the reference is maintainable.

ISSUE NO. 2

10. Admittedly the 2nd Party-workman was engaged as a part time sweeper for a period of 85 days commencing from 8-11-1990 and ending on 31-1-1991 on daily wage basis payable monthly at the rate of Rs. 225 per month. His services were never extended beyond that period and after completion of 85 days he was terminated from service. Therefore, he has no legal right to claim re-employment or protection of Section 25-F and 25-H of the Industrial Disputes Act, 1947. As regards his alleged engagement as care taker at Holiday Home, Puri from 1-4-1992 to 11-1-1994 the contention of the 1st Party-Management is that the care taking job of the Holiday Home at Puri was given to one Shri Jagdish Singh on contract basis and the 1st Party-Management had never engaged the 2nd Party-workman as care taker of the said Holiday Home. The 2nd Party-workman has filed photostat copies of four receipts of payment of Rs. 250 per month by the care taker of the Oriental Insurance Employees Welfare Society, Holiday Home, Puri. Although these receipts have not been proved in evidence by the 2nd Party-workman even though they do not prove the fact that the 2nd Party-workman was employed by the 1st Party-Management to look after the Holiday Home at Puri as care taker. On the contrary these receipts show that the payment of Rs. 250 per month was being made by the care taker Jagdish Singh to the 2nd Party-workman meaning thereby that the 2nd Party-workman was engaged by the care taker Jagdish Singh and not by the 1st Party-Management. Therefore, the 2nd Party-workman has not rendered any service under 1st Party-Management as care taker of Holiday Home at Puri for the period from 1-4-1992 to 11-1-1994. Since the 2nd Party-workman was engaged as a part time sweeper on daily wages for a period of 85 days only his services automatically stood terminated after expiry of the period of engagement. There is no case of extension of service after the period ending on 31-1-1991. Hence no written order or notice was required to be given with regard to termination of his services. The 1st Party-Management was within its right not to further engage him after 31-1-1991 as part time sweeper. Under these circumstances the action of the 1st Party-Management of Oriental Insurance Company Limited in terminating the services of the 2nd Party-workman Shri Dinabandhu Naik is legal and justified. This issue is decided against the 2nd Party-workman.

ISSUE NO. 3

11. In view of the findings recorded above the disputant-workman is not entitled to any relief. His claim is liable to be rejected and is hereby rejected.

12. The reference is answered accordingly.

Dictated and Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल. आई. सी. ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 3/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-17012/32/2000-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1837.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of LIC of India, and their workman, received by the Central Government on 15-6-2011.

[No. L-17012/32/2000-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
KANPUR**

Industrial Dispute No. 3 of 2001

BETWEEN:

Sh. Dhiraj Pal Singh,
S/o of D. Singh,
Near Lal Agarawal,
Dharmshala Bareilly Junction,
Bareilly.

AND

LIC of India,
The Zonal Manager, LIC of India,
Zonal Office 35-D, Ram Pur Bagh,
Bareilly

AWARD

1. Central Government, MoL New Delhi vide notification No. 17012/32/2000/IR (B-II) dated 2-3-2001, has referred the following dispute for adjudication :

2. "Whether the action of the management of LIC Bareilly in terminating the services of Sri Dhiraj Pal Singh with effect from 1-8-99, is fair and justified ? If not to what relief the workman is entitled ?"

3. Brief facts are :

4. It is alleged by the claimant that he was employed on 7-1-98, as sub staff at office of 35D Rampur Bagh Bareilly by the opposite party. Just after employment, opposite party started making payment of his wages after taking application of different persons in different names and payment was used to made to him. A statement is also enclosed with this claim statement showing that wages has been paid to him in his name. He was used to be paid at the rate of Rs. 50 per day from 7-1-98 to 5-3-98. At present he does not remember the names of different persons on whose behalf the payment has been made, because in the beginning for two three months the payments were made through vouchers but no entry was made in the control labour register. During his service as sub staff, opposite party utilized his services for bringing refreshment items, the payment of that was also made through vouchers by the branch manager, some time it was done in different name, photo of relevant documents are filed, but the originals are with the department. Lastly he was made to work in the name of Shyam Singh with effect from 17-7-99 to 26-7-99. Thereafter, he worked with effect from 27-7-99 to 31-7-99, but the payment of salary made to him without obtaining his signature and on 1-8-99, he was removed from service by an oral order by the then branch manager Sri M. J. Begh.

5. Opposite party has engaged one Sri Raj Veer, Ram Prasad and Ashfaq on 12-8-99. Sri Ashfaq had come after him and was junior to him. Not only this, even a new person Sri Ram Kishan who was never in the service was employed as a sub staff. After that he used to go to office in the hope that he will be employed but on 20-8-99, the then branch manager refused clearly to take him on job. He wrote registered letter regarding his financial constraints to the opposite party and sent the registered letter on 26-8-99. At the time of dispensation of his services neither he was served with any notice, notice pay nor retrenchment compensation has been paid to him, therefore, the opposite party has breached the provisions of Section 25F of Industrial Disputes Act. Opposite party has further breached the provisions of Section 25G of the Act when junior to him was retained in the service and also breached the provisions of Section 25H of the Act when fresh hand by name Ram Kishan was engaged by the opposite party without affording any opportunity of

re-employment to him. He has also alleged that after illegal retrenchment despite making his best efforts he could not get any employment and after his removal he is unemployed. It has also pleaded by the claimant that the mode in which his services were utilized is a glaring example of unfair labour practice and also in breach of social justice.

6. It is therefore, prayed by him that the action of the opposite party as referred in the schedule of reference order be held to be illegal and unjustified and he be directed to be reinstated in service of the opposite party with full back wages, seniority and consequential benefits.

7. Opposite party has filed the written statement.

8. It is stated that Dhiraj Pal Singh was employed as casual worker on daily wage basis because of the exigency of service. There is no question of termination of service at all as the expiry of work for which engaged his services were automatically come to an end. It is alleged that in LIC for recruitment there is a prescribed procedure and without following the procedure any appointment is made by any officer, it is perse illegal. The claimant was never appointed on regular basis in accordance with rules. It is denied that the applicant worked under different names and his name was recorded on the register whenever he had worked as casual worker on daily rate basis. It is stated that the applicant at no point of time worked as Sri Shyam Singh with the corporation. It is denied that the applicant was ever engaged in connection with the regular nature of work and the very nature of the engagement of the applicant was daily rated basis. It is stated that he had worked as casual worker on daily wage basis and disengagement of his service does not amount to retrenchment and the provisions of Section 25F is not attracted.

9. On the basis of above, it has been stated that the claim petition of the claimant is devoid of merit and he is not entitled for any relief and the claim is liable to be dismissed.

10. Rejoinder has also been filed by the claimant but nothing has been pleaded therein except reiterating the facts of his claim petition.

11. Heard and perused the record.

12. Both the parties have filed the oral as well as documentary evidence.

13. I will discuss the documentary evidence while discussing the evidence at the appropriate stage.

14. Claimant has adduced himself as Dhiraj Pal Singh W.W. 1. Opposite party has adduced Sri M. J. Beg. Manager LIC as M.W. 1.

15. I have examined the statement of both the witnesses given on oath. It is a fact that LIC is a public

institution it is an important organ of Government of India. It is expected that the officers of LIC will come with clean hands and clear mind.

16. W.W. 1 Sri Dheeraj Pal has specifically stated on oath that he was engaged on 7-1-98, though in the chief somehow the date has been recorded as 1-1-98, but this appears to be a typographical error because the opposite party has clearly admitted in his written statement his engagement. Therefore, the version of the claimant has to be believed that he was engaged on 7-1-98 as sub-staff IVth Class as daily rated casual labour. He also stated that the opposite party did not provide him the work in the month of August 1999 but he stated that he worked till 1-8-99, though it is a date of his removal, actually wants to say that he worked till 31-7-98. In the claim statement as well as in the statement he specifically stated on oath that during this period salary was paid to him in the name of different fictitious persons. He also stated on oath that the opposite party has issued him a commendation certificate for his good work on 13-1-99, a photocopy of which has been filed by the claimant paper number (sa-30). He also stated that the opposite party also used to take work from him for receiving the dak on which he used to sign in his name, whereas the department used to make payment of his wages in the name of other persons. Opposite party also used to prepare voucher in his name in respect of work which was taken by him. In the year 1998, the opposite party prepared a list of his employees for giving rewards at the eve of Deepawali which also include his name. Opposite party has also prepared contract labour register in which his name is mentioned. He has been thoroughly cross-examined by the opposite party, but nothing has come out which makes his statement unbelievable. Putting in such question like that he was not issued any appointment letter or his name was never called from employment exchange is of no use because the provisions of I.D. Act are in the nature of Social Legislation and does not make any difference in between permanent temporary or a casual daily rated worker. It is not the whims of the opposite party that they will engage a person for a particular period and will remove him and induct another person in his place.

17. I have examined the statement of M.W. 1. He is a senior officer, though the workman due to his ignorance or otherwise could not cross-examine him, but even then a duty is cast on tribunal to consider all the circumstances. M.W. 1 has stated that he has brought the budget control register of the year 1998-1999 in original, according to which Dheeraj Pal Singh has worked only for 8 days. But this statement is totally wrong. During arguments even I inquired from the A.R. for the opposite party Sri V. K. Gupta that on one side they have filed several documents vide list dated 6-4-2004 in which there are different vouchers even in the name of Dheeraj and Dheeraj Pal. I would like to say that Dheeraj and Dheeraj Pal is one and

the same person as claimant. There are different vouchers of different dates. Voucher dated 20-2-99 is in the name of Dheeraj, labour charges paid to him for 6 days showing an amount of Rs. 300. Another voucher dated 20-2-99, appears to have been prepared for refreshment charges showing that an amount of Rs. 159 has been paid to the workman, voucher dated 15-3-99 in the name of Dheeraj Pal showing amount of Rs. 364 being paid to the claimant Sri Dheeraj Pal as refreshment charges. Similarly there are numerous vouchers till 28-4-99 showing the name of the claimant Dheeraj Pal showing different amount. Whereas in the statement MW.1 has stated that he has brought the original application and voucher of Dheeraj Pal Singh and these are exhibits M-1. And M-2. This voucher is dated 12-4-99, showing an amount of Rs. 400 paid to him for his job of scavenging and to provide waters to the staff. As I have already stated that this statement of M.W.1 is not true because in the one hand they are saying that there is only one voucher and he had worked only for 8 days whereas the documents himself filed by the opposite party indicates that there are different payment vouchers. Even the voucher dated 20-2-99 showing an amount of Rs. 300 paid to him for scavenging and providing water to the officials of the branch. When I inquired that if Dheeraj Pal was not engaged for such a long period why was he being sent for bringing refreshment and other items for the staff of the branch. There was no specific reply. It appears to me that either the vouchers are fake in the name of refreshment voucher or best presumption could be drawn that the work was being taken from Dheeraj Pal to bring refreshment items even then it will be presumed that he was engaged and his services were utilized by the opposite party. Whereas different voucher have been filed by the claimant. Opposite party has not filed the original of all such vouchers.

18. As I have already stated that it was expected from the opposite party which is a public institution that they will come with clean hand before the tribunal. It is a fact that records remains with the opposite party. They have filed an affidavit of Sri Sunil Tikku, AAO (Legal and HDF) paper no. 29/1. In Para no. 4 of this affidavit they have stated that they could not trace out the vouchers mentioned in Para 4. I think that there is something which makes me to believe that something is being hidden.

19. In the claim statement and in the evidence the claimant has specifically stated that after his removal other persons in the name of Rajveer, Ram Prasad and Ashfaq were also engaged on 12-8-99 and Ashfaq was junior to him and he is still working. In the written statement the opposite party has not specifically replied about these paras. Simple denial is not sufficient. Opposite has nowhere mentioned in their written statement that they have engaged other persons in the absence of Dheeraj Pal. List of voucher filed by the opposite party shows the name of Raj Pal and Ram Singh on different dates and making

payment of labour charges to them also. More interesting is there is a voucher in the name of Ram Singh dated 24-4-99 making a payment of Rs. 350 against scavenging and supplying water to the staff of the branch where as in the same date on 24-4-99, there are two more voucher Nos. 443 and 442 showing payment of Rs. 75 and Rs. 96 against cost of ice stationary etc. Again the presumption can be drawn that false vouchers in different names have been prepared as stated by the claimant on oath. Claimant has also filed extract of register in which daks were received by him with effect from 5-2-98 to 27-7-99. From this I can infer that it appears to be a document of the opposite party, though photocopies, it was expected from the opposite party to file the original of the same. Therefore, in my view regarding the number of days I feel that the initial burden has been discharged by the claimant regarding his continuity in service with effect from 7-1-98 to 31-7-98. Now the burden shifts on the opposite party to controvert this fact but they have not come with clean hands and they have not controverted the facts by adducing cogent evidence. Statement adduced by M. W. I appears to be unbelievable. Register prepared by them appears not genuine as discussed by me while discussing the evidence. Therefore, the claimant has been successful in discharging his burden that he had rendered more than 240 days of continuous service preceding 12 calendar months from the date of removal of his service by the opposite party.

20. Claimant has also stated in his claim statement and also adduced evidence that after his removal from service other persons Ram Prasad and Raj Veer Singh were made to continue whereas one person Mohd. Ashfaq was engaged who was junior to him. I have examined the statement of M. W. I on this point. M. W. I has not stated even a single word stating the denial of these facts. Claimant has also been cross-examined but nothing has come out. So there is a fact that one Mohd. Ashfaq who was junior to the claimant was engaged by the opposite party and still in service. In this way the opposite party have also breached and adopted unfair labour practice.

21. Therefore, considering all the circumstances and cumulative facts of the case I am of the view that the claimant has been able to prove his case and the opposite party has verbally removed him from service on 1-8-99, without complying with the provisions of Section 25F of the Act, as such the workman is entitled to reinstatement in service of the opposite party with 50% of back wages, continuity of service and other consequential benefits.

22. Reference is answered accordingly in favour of the claimant and against the opposite party.

23. Before parting with it, it may be pointed that both the parties have filed their respective documents on separate folders which shall form part of the record.

RAM PARKASH, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्र. आ. 1838.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 227/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-22012/555/1999-आई आर (सी-II)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1838.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 227/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 15-6-2011.

[No. L-22012/555/1999-IR (C-II)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No. CGIT/NGP/227/2000

Dated : 22nd February, 2011

Party No. 1 :

The General Manager,
Western Coalfields Ltd.,
Nagpur Area,
Jaripatka, Nagpur

Versus

Party No. 2 :

The Jt. General Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh
(INTUC),
Plot No. 604, Behind Giripeth Post Office,
Opp. RTO, Nagpur

AWARD

(Dated : 22nd February, 2011)

This is a reference made by the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial-

Disputes Act, 1947 (14 of 1947) ("the Act" in short) for adjudication of the industrial dispute between the employers, in relation to the management of the General Manager, WCL and their workman, Shri Hemant Kumar Rushiya ("the Workman" in short), as per letter No. L-22012/555/99-IR (CM-II) dated 27-7-2000, with the following Schedule :

"Whether the action of the management of Western Coalfields Ltd., Saoner Sub-Area, Saoner, Distt. Nagpur (Rep. by Sub-Area Manager) in dismissing the services of Sh. Hemant Kumar Rushiya, Ex. Clerk, Gr. II w.e.f. 16-1-96 is legal and justified? If not, to what relief the workman is entitled and from what date?"

2. Being noticed, on behalf of the workman, Shri Hemant Kumar Rushiya ("the workman" in short) this union, "Rashtriya Koyala Khadan Mazdoor Sangh (INTUC)" filed the statement of claim, whereas, the management of WCL filed their written statement.

According to the statement of claim, the workman was in employment of WCL and was a permanent workman and he was initially appointed on 29-2-88 and by virtue of his loyal, able and efficient services, he was selected and promoted as Clerk Grade-II and he was placed under suspension by Sub Area Manager, Saoner Sub Area, by the office Order dated 19/20-4-95 and he was served with a charge sheet dated 18-5-95, under clause Nos. 26.1, 26.12, 26.16 and 26.22 of the certified standing orders and the workman by his representation dated 22-5-95 requested for supply of copies of the compliant said to have been given against him as mentioned in paragraph No. 1 of the charge sheet and by order dated 25/26-5-1995 of the Sub-Area Manager, a copy of the statement of the workman dated 15-4-95, given before the management was given to him and on 27-5-1995, he submitted his reply to the charge sheet, but the management vide order dated 16-9-1995, initiated a departmental proceeding and appointed Shri R. K. Sharma, Superintendent of Mine, Saoner Mine. 1 as the Inquiry Officer and vide letter dated 30-9-1995, the workman requested to the Inquiry Officer to allow him to engage advocate, Shri V. D. Metkar to defend him, but his request was rejected by the Inquiry Officer and on 30-9-1995, the workman requested to supply him the 14 documents connected with the enquiry, but by letter dated 30-5-1995/4-10-1995, the Inquiry Officer supplied copies of only five documents and the departmental enquiry was conducted on various dates but he Inquiry Officer did not give the workman fair and reasonable opportunity and refused to stay the departmental enquiry till disposal of the criminal case filed against him by the Police authorities of Saoner Police Station and on 5-10-1995, the day of the first sitting of the enquiry, the Inquiry Officer rejected the request of the workman for supply of the copies of the rest documents as asked by him on 30-5-1995 and thus, the

Inquiry Officer denied to afford fair and reasonable opportunity to the workman and the Inquiry Officer did not explain the procedure of the enquiry and the Inquiry Officer held defective enquiry adopting partial attitude in favour of the management with a motive and object to bring home the charges by hook or crook against the workman, even though the charges levelled against the workman were unfair, baseless and time barred.

The further case of the workman is that though the complaint dated 19-4-1995 made by Himmatlal Agrawal, Contractor to the General Manager, WCL, Jaripatka, Nagpur and the F.I.R. dated 13-4-1995, submitted by Shri Himmatlal Agrawal before the Police were placed before the Inquiry Officer as documents No. D-5 and D-6 by the management, the complainant, Shri Himmatlal Agrawal was not examined as a witness, as a result of which, the workman did not get the opportunity to cross-examine him and the documents D-5 and D-6 were also not proved through the said witness. so the enquiry was defective and findings of the Inquiry Officer there upon are also perverse and unfair and officers on higher rung than the Inquiry Officer were examined in the enquiry and to please them, the Inquiry Officer conducted the enquiry unfairly and the evidence of the witnesses of the management was inconsistent and there was no legal evidence to hold the charges to have been proved against the workman and though Shri D. Y. Kale, Dy. Chief Security Officer and one Shri Nawab Ansari, Ex. Security Guard were also charge sheeted by the management on similar and identical charges and were found guilty in the department enquiries held against them, no penal action was taken against them, but the departmental enquiry against the workman was held in a haste and order of dismissal from service was passed against him and thus he was discriminated and the same is sufficient to quash and set aside the order of dismissal passed on 16-1-1996 and the charge sheet was not served on the workman within three days as required by the certified standing order No. 28.2 and as such, the charge sheet is defective, illegal, void, ultra-vires and time barred, hence the enquiry basing on such charge sheet, the findings of the Inquiry Officer and the punishment imposed are also illegal and liable to be set aside. The workman has prayed for setting aside the order of dismissal passed against him, his reinstatement in service with continuity of service and full back wages and other consequential benefits.

3. The management of W.C.L. ("Party No. 1" in short) filed its written statement admitting the contents of paragraphs 1 to 14 of the statement of claim except denying the averments that the workman was promoted as Clerk Grade-II as he was loyal, able and efficient. It is further pleaded by the Party No. 1 that the Inquiry Officer supplied copies of five relevant documents to the workman, which he was entitled to get and necessary for departmental enquiry and the workman did not made any protest or

insist for supply of the copies of the remaining documents during the enquiry by stating their relevancy for the purpose of his defence and in the statement of claim also, the workman has not pointed out that the said documents were relevant or any prejudice was caused to him because of non-supply of the copies of the said documents and the Inquiry Officer gave fair and reasonable opportunity to the workman and the Inquiry Officer was justified in proceeding with the departmental enquiry as the same was totally independent of the criminal case filed by the Police and though Shri Himmatlal Agrawal was not examined as a witness, the management examined other witnesses to prove the guilt of the workman and the enquiry report shows that the Inquiry Officer did not base his findings on the documents D-5 and D-6 and even though, those two documents were produced in the enquiry, they had not been relied upon for proving the guilt of the workman and as such, there was no necessity for the management to examine Shri Himmatlal Agrawal as a witness and though the witnesses, Shri R. M. Moghe and Shri K. K. Bakshi were of higher grade than the Inquiry Officer, their examination does not make the enquiry unfair or defective and the findings arrived at cannot be termed as perverse, merely because, the two witnesses were superior in rank to the Inquiry Officer and the workman has failed to demonstrate that the enquiry was conducted in a biased manner and the Inquiry Officer has reached the findings on the basis of the entire evidence on record and the enquiry cannot be termed as unfair or illegal merely because Shri R. M. Moghe, who had issued the charge sheet and also signed the dismissal order appeared as a witness in the enquiry and the charges levelled against the workman are not vague, unspecific, illegal or invalid and Shri D. Y. Kale and Shri Nawab Ansari were also charge sheeted on the basis of the nature of their involvement and Shri Kale was not governed by the standing orders and during the pendency of the enquiry, he got superannuated and he was found guilty and the competent authority imposed the punishment of forfeiture of a part of the gratuity payable to him, as he had already retired and the departmental enquiry was not held against the workman in haste and no discriminatory attitude was adopted against him and the charge was not time barred and the workman misread and misinterpreted the standing order No. 28.2 and the charge sheet was perfectly legal and valid and the workman is not entitled for any relief.

4. It is necessary to mention that as it is a case of dismissal from service, the fairness of the departmental enquiry held against the workman was taken as a preliminary issue for consideration and vide orders dated 11-1-2007, the enquiry was held to be proper and legal. It is also necessary to mention that a petition was filed on behalf of the workman on 14-2-2007 for review and recall the order dated 11-1-2007, but the said petition was rejected on 8-4-2009.

5. At the time of argument, the following points were raised on behalf of the workman by the union representative :

- (a) There was delay and latches in issuing the charge sheet to the workman.
- (b) The enquiry was defective and there was denial of principles of natural justice to the workman by the Inquiry Officer.
- (c) The findings of the Inquiry Officer are perverted.
- (d) While imposing the punishment of dismissal from service, the past clean service record of the workman was not taken into consideration by the Disciplinary Authority.
- (e) Discriminatory attitude was shown by the management while punishing the workman by way of dismissal from service, whereas a minor punishment of forfeiture of an amount of Rs. 25,000 from the gratuity was imposed against Shri D. Y. Kale, the ex-Deputy Chief Security Officer after his retirement, even though he was found guilty of the same charge, while he was still in service.
- (f) Reasonable likelihood of bias on the part of the Disciplinary Authority, and
- (g) The workman was acquitted in the criminal case instituted against him and as the departmental enquiry was based on identical and similar facts and evidence, the order of dismissal passed against the workman is liable to be set aside.

6. Before delving into the merit of the contentions raised on behalf of the workman, I think it proper to mention here that while passing orders on the validity of the departmental enquiry, the points raised regarding the delay in submission of the charge sheet against the workman, the enquiry was defective and there was denial of principles of natural justice to the workman by the Inquiry Officer, enquiry was completed during the pendency of the case filed by the workman challenging the submission of the charge sheet before the Labour Court, charge sheet was not issued by the proper authority but issued by the Sub-Area Manager, and that the Sub Area Manager, who issued the charge sheet and passed the order of dismissal appeared as a witnesses in the departmental proceeding and thereby there was biased attitude towards the workman were considered and answered against the workman. Therefore, the first two points raised on behalf of the workman regarding delay in submission of the charge sheet and enquiry was defective need no consideration again.

7. So far the third contention regarding perversity of the findings of the Inquiry Officer is concerned, it was submitted that the Inquiry Officer did not speak in his enquiry report about the time barred charge sheet and the Inquiry Officer did not mention any reason for not summoning the complainant, contractor Shri Himmatlal Agrawal to give evidence in the enquiry, therefore, the findings are perverted and deserve to be rejected.

In reply, it was submitted by the management that the workman had admitted his guilt before his superior officers and a statement to that effect was recorded on 15-4-1995 by the management, where he admitted to have acted dishonestly, but, after receipt of the charge sheet and due consultation with the union, he changed his statement stating that while giving the earlier statement he was under mental pressure, which is nothing but motivated falsehood and after thought and the findings of the Inquiry Officer cannot be said to be perverted, as the Inquiry Officer has not mentioned anything about late submission of the charge sheet, as because, such findings are based on the evidence on record and Shri Agrawal was not examined as a witness as he is a stranger and management was able to prove the charges by examination of material witnesses and production of the required documents and management did not think it necessary to examine Shri Agrawal as a witness.

It is necessary to mention here that while considering the validity of the departmental enquiry, the submission regarding the delayed issue of the charge sheet was considered by this Tribunal and it was found that though the charge sheet was issued after about a month from the date of the order of suspension, the same cannot be taken as a ground for vitiating the enquiry and the provisions of the standing order referred to are only directive and cannot be treated as mandatory and before starting of the enquiry, there was correspondence and representation on behalf of the petitioner and the management had explained and informed him the reasons for the delay and even a report was lodged in the police station and in such circumstances, issuing of charge sheet after one month cannot be treated as unnecessary delay and the delay was not with any ulterior motive. In view of such findings, it cannot be said that as the Inquiry Officer did not mention anything in his enquiry report about the delay in submission of charge sheet, the findings should be treated as perverse.

So far the non-examination of Shri Himmatlal Agrawal is concerned, on perusal of the document of the departmental enquiry, it is found that the copy of the F.I.R. submitted by Shri Agrawal has been marked as management document No. 3. It is clear from the copy of

the F.I.R. that Shri Agrawal was not an eye witness to the occurrence and he came to know about the incident being informed by his supervisor. The supervisor of Shri Agrawal has been examined as a witness. So due to non-examination of Shri Agrawal, the findings of the Inquiry Officer cannot be held to be perverse. Hence, I find no force in the contention raised by the union representative on behalf of the workman.

8. The next contention raised was regarding non-consideration of the past clean record of the workman, while imposing the punishment of dismissal from service. It was submitted by the union representative on behalf of the workman that clause 28.6 (the correct clause is 28.7) of the certified standing orders provides that, "In awarding the punishment gravity of the misconduct, previous record of the workman and any other extenuating or aggravating circumstances that may exist shall be taken into account and in this case as the past clean and unblemished record of the workman was not taken into consideration by the Disciplinary Authority at the time of imposing the punishment, imposition of the punishment is illegal and unfair. In reply, it was submitted by the learned advocate for the management that awarding of punishment is the discretion of the Appointing Authority and the allegations are very serious and the workman was holding position of trust and commission of theft, fraud and dishonesty in forfeiture of that trust and continuance of the workman in service was detrimental to the discipline and security of the business of the employers and in view of the proved serious misconducts, there was no question of consideration of the past record and it was the discretion of the employer to consider the same in appropriate cases and as such, even if nothing has been mentioned in the order of dismissal passed against the workman, by the Disciplinary Authority regarding consideration of the past record of the workman, the order of imposition of the punishment cannot be said to be illegal. On perusal of the materials on record and taking into consideration the submissions made by the parties, I find force in the submission made by the learned advocate for the management and hold that in view of the proved serious misconducts against the workman, cannot be said that as the past service record of the workman was not considered at the time of imposition of the punishment by the disciplinary proceeding, the punishment is illegal.

9. The next question raised is regarding showing of discriminating attitude by the management towards the workman in imposing the punishment. According to the submission made by the union representative for the workman, Mr. Sharma, the Party No. 1 falls within the meaning of 'state' in accordance to Article-12 of the

Constitution and as such, its action should not be discriminatory but in this case, the action taken against the present workman is discriminatory as charge sheet had also been submitted against Shri D. Y. Kale, Deputy Chief Security Officer for commission of the alleged theft of coal and after holding of departmental enquiry, he was found guilty of the charges by the Inquiry Officer and the enquiry was concluded against him in 1996 and Shri Kale retired on superannuation on 31-10-97, but no punishment was imposed upon Shri Kale during his service but after his retirement, a punishment of forfeiture of Rs. 25,000 as penalty to be recovered from his gratuity was imposed, which can be considered to be a very minor penalty in comparison to the punishment of dismissal from service imposed against the workman for commission of alleged identical offence of theft of coal and as such, the punishment can be held to be discriminatory, excessive, harsh and illegal and unjustified.

On the other hand, it was submitted by the learned advocate for the Party No. 1 that during the pendency of the departmental enquiry, Shri Kale was retired from service on superannuation and as such, the punishment of forfeiture of Rs. 25,000 out of the gratuity of Shri Kale was imposed against him and there is no force in the contention that the departmental enquiry was concluded in 1996 and no punishment was imposed, while Shri Kale was in service. The workman has filed the documents in regard to the departmental enquiry of Shri Kale. On perusal of the said documents, it is found that the enquiry report was submitted by the Inquiry Officer in the departmental enquiry conducted against Shri Kale on 10-11-97, which was after the retirement of Shri Kale on superannuation, as according to the workman, Shri Kale retired on 31-10-97. Hence, I do not find force in the contention raised by the union representative that there was discrimination against the workman.

10. Placing reliance on the decision reported in (Mrs. Kiran Agrawal Vs Chief Secretary to the Govt.), 2008 LABIC - 1854 (Himachal Pradesh) it was submitted by the union representative on behalf of the workman that in this case, the Sub-Area Manager, WCL, Saoner Sub-Area, Mr. R. M. Moghe, who was the Disciplinary Authority conducted the preliminary enquiry, issued the charge sheet and suspension order of the workman and also appeared as a witness in the departmental enquiry and also passed the order of dismissal from service against the workman by accepting the enquiry report and as such, it can be held that there was likelihood of bias and as such, the disciplinary proceeding is vitiated. However, with respect, I am of the view that the decision mentioned above has no application to the present case in hand, as the facts and

circumstances of the case referred in the decision are quite different from the facts and circumstances of the case at hand. Moreover, while deciding the validity of the enquiry, it was ordered that, "there is nothing wrong in the Sub-Area Manager appearing as a witness in the enquiry proceedings and he was fair enough to offer himself for cross-examination and he was not a direct witness and he had explained as to how he learnt about the incident from the Police and asked his officers to be careful as Police investigation was in progress. On perusal of the materials on record, it is found that there is nothing on record to show any biasness towards the workman by the Sub-Area Manager.

11. The last point raised on behalf of the workman was that a criminal case had been instituted against the workman by the Police in connection with the alleged incident of theft and after completion of full trial, the workman had been acquitted from the charges and as such, the punishment of dismissal from service should not have been passed against the workman. The workman has filed the copy of the judgement of the case bearing RCC No. 362/95, from which it is found that the workman was acquitted in the said case on 20-2-2003. The workman faced his trial in the said criminal case u/s 406/34 I.P.C. However, in the departmental proceeding, the workman faced the enquiry of commission of theft, fraud and dishonesty. The witnesses examined in the departmental proceeding and in the criminal proceeding were not the same. Moreover, the imposition of the punishment against the workman was on 16-9-95, which was much prior to the judgement of the criminal proceeding. It is well settled that there is nothing wrong in parallel proceedings being taken one by disciplinary proceeding and the other in the criminal court and the pendency of the court proceeding does not bar the taking of disciplinary action and the power of taking such action is vested in the Disciplinary Authority and criminal case and departmental proceeding operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff and the standard of proof required in those proceedings is also different from that required in a criminal case and while in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. In this case, the findings of the Inquiry Officer are based on the materials on record of the departmental enquiry and the order of punishment passed in the departmental proceeding was much earlier to the judgement of the criminal proceeding.

Hence acquittal of the workman in the criminal case does not have any bearing in the findings of the Inquiry Officer and the punishment imposed against the workman.

12. So far the quantum of punishment is concerned, it is well settled that punishment imposed by Disciplinary Authority unless shocking to the conscience of the Court/Tribunal is not subject to judicial review. On perusal of the materials on record and the act of misconducts committed by the workman, it is found that the punishment of dismissal from service is not at all disproportionate and as such, there is no scope to interfere with the punishment. Hence, it is ordered :

ORDER

The action of the management of Saoner Sub-Area of WCL in dismissing the services of Shri Hemant Kumar Rushiya Ex. Clerk-Gr. II, w.e.f. 16-1-96 is fair, proper and justified and the workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1839.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डीजल पावर इंजीनियर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-31011/5/2006-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1839.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-17/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s Diesel Power Engineers and their workmen, which was received by the Central Government on 15-6-2011.

[No. L-31011/5/2006-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
MUMBAI

JUSTICE G. S. SARRAF, Presiding Officer

Reference No. CGIT-17 of 2006

PARTIES :

Employers in relation to the management of :

M/s. Diesel Power Engineers

AND

Their workmen

APPEARANCES :

For the Management : Shri Umesh Nabar, Adv.

For the Transport and Dock Worker's Union : Shri A. M. Koyande, Adv.

For the Sarva Shramik Sangathan : Shri Francis Martis,
General Secretary

State : Maharashtra

Mumbai, dated the 28th day of April, 2011

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of M/s. Diesel Power Engineers, Mumbai by not settling the charter of demands raised by the union vide their letter dated 5-5-2005 is justified ? If not, what relief the union is entitled to ?"

2. An application has been filed on behalf of the first party on 28-3-2011 wherein it has been requested to pass an Award in terms of settlement dated 28-4-2007 between the parties, a copy of which is enclosed with the application.

3. Shri A. M. Koyande, Advocate on behalf of the second party no. 1 and Shri Francis Martis, General Secretary of the second party no. 2, state that they have no objection if reference is disposed of in accordance with the settlement dt. 28-4-2007.

4. The reference, therefore, stands disposed of in terms of memorandum of settlement dt. 28-4-2007 as agreed and requested by the parties. The copy of the said memorandum of settlement will be part of this award.

5. An Award is made accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 15 जून, 2011

AWARD

का. आ. 1840.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 20/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/82/2003-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1840.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/82/2003-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

PRESENT :

Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 20/2003

Date of Passing Award—12th May, 2011

BETWEEN :

The Management of the Regional Manager,
Indian Bank, Regional Office,
117/118, Station Square,
Bhubaneswar-751 001 ... 1st Party Management

AND

Their workman Shri Jitendra Kumar Nayak,
At Chhakadipur, P.O. Naranagachha,
Via-Ahiyas, Dist. Jajpur,
Orissa ... 2nd Party Workman

APPEARANCES :

M/s. B.M. Pattnaik : For the 1st Party-
& Associates Management

M/s. B.C. Bastia & : For the 2nd Party-
Associates Workman

This reference relates to an industrial dispute which has been sent by the Government of India in the Ministry of Labour for adjudication to the Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-12012/82/2003-IR(B-II), dated 13-06-2003.

2. The dispute referred for adjudication as mentioned under the schedule is quoted below :

"Whether the action of the management of Indian Bank, Tulsipur Branch, Cuttack by terminating the services of Shri J.K. Nayak temporary Sub-staff w.e.f. 24-6-2001 without following the provisions of Section 25 of I.D. Act, 1947 and Sastri Award is legal and justified? If not, what relief the disputant is entitled to?"

3. Subsequently a corrigendum was received from the Government of India vide letter of even number dated 8-2-2007 in which the word "F" was added to Section 25 in the Schedule of reference. No other change was made.

4. The 2nd Party-workman filed his statement of claim mentioning that he was appointed as sub-staff by the Regional Manager, Indian Bank, Bhubaneswar and posted at Tulsipur Branch, Cuttack. He joined his duties on 17-8-1991. His name was sponsored by the Employment Exchange and interview was held in August, 1990 and he was selected and empanelled for appointment in sub-staff category. Besides working at Tulsipur branch, he also worked at Rourkela, Danpur and Alba branch on leave vacancies of permanent sub-staff. His initial monthly pay was Rs. 1500/- which was subsequently increased to Rs. 3700/- per month with D.A. and HRA. He signed the attendance registers maintained in the respective branches of the Bank. While working at Cuttack Main Branch he went on leave for one month from 7-4-2001 due to illness. After recovery from illness after one month when he reported for duty in the Cuttack Main Branch, his joining report was not accepted and he was advised to report at Tulsipur Branch. Accordingly he reported for duty at Tulsipur Branch, but his joining report was not accepted and he was not given duty. He reported the matter to the Asstt. General Manager but to no avail. Finally he was refused employment. He performed his duty most sincerely and diligently and there is no stigma of any kind against his service career. Neither he was issued with any charge-sheet for misconduct nor any enquiry was held against him. He has rendered continuous service for more than 10 years and refusal of employment without following the principles of natural justice amounts to retrenchment and for that mandatory provisions of Section 25-F of the Industrial Disputes Act have not been followed. As such his termination/retrenchment is illegal, unjustified and

voidable. He raised a dispute before the Assistant Labour Commissioner (Central) who on failure of conciliation referred the matter to the Government of India in the Ministry of Labour which in turn sent the dispute to this Tribunal for adjudication. Therefore his termination be declared illegal, unjustified and void ab-initio and the Management be directed to reinstate him in service with full back wages and other service benefits. He has not been gainfully employed elsewhere after being terminated from service by the bank.

5. The 1st Party-Management in its written statement has stated that the claim statement filed by the 2nd Party-workman is not maintainable under the Industrial Disputes Act. The 2nd Party-workman Shri J.K. Nayak was a temporary sub-staff in the panel of Tulsipur branch. The empanelled temporary sub-staff are engaged in branches/offices of the Bank on leave vacancies of permanent sub-staff depending purely on the requirement of the Bank. As such these temporary sub-staff cannot demand that they should be engaged on regular basis. The engagement of the disputant-workman was against leave vacancies and that too for intermittent period. He was never appointed as a permanent sub-staff. His services had been utilized at various branches as and when required by the Bank against the leave vacancies of permanent sub-staff. Whenever his services were utilized in the leave vacancies of the permanent sub-staff he was paid pro-rata daily wages for his temporary utilization. It is not a fact that he was reporting daily for duty and signed the attendance register and getting a salary of Rs. 1500/- per month which was subsequently increased to Rs. 3700/- per month. There were complaints from the customers of Cuttack branch that the 2nd Party-workman had misappropriated funds given to him by them for depositing in their account with the bank. He had also demanded and received bribe from one customer for opening savings bank account and issuing cheque book. The complaints were investigated and since a prima-facie case was found, an FIR was lodged with the Mangalbag Police Station, Cuttack which was duly registered. After the complaint being lodged he had not reported for duty. It was decided to stop intermittent engagement of Shri Nayak during the pendency of departmental action/criminal case. He was issued a letter calling for his explanation to his last residential address but the same was returned undelivered duly marked "party absent". Shri Nayak never turned up at any of the bank branches where he was engaged intermittently in the leave vacancies of permanent sub-staff nor reported there for duty. His integrity in itself is thus in question. He was never in continuous service as claimed by him. During the entire period of 10 years of empanelment as a temporary sub-staff he did not work for 240 days in a calendar year. The claim of Shri Nayak is vexatious and an attempt to cover up his criminal activity. He is not being engaged at present in view of the precarious situation as it will be

detrimental to the interest of the bank since perpetration of frauds have to be viewed seriously.

6. The 2nd Party-workman filed rejoinder to the written statement of the 1st Party-Management and refuted the allegations regarding misappropriation of funds and taking bribe from customers. He has stated that he was no way concerned in depositing the money of the customers or providing pass book. To materialize their pre-determined motive of terminating his services they have raised the above false allegations. Neither the workman was charge-sheeted for such misconduct nor any enquiry was conducted to that effect. In fact the principles of natural justice have not been followed. It is also false and an after thought assertion that the workman did not turn up for duty and left the job himself due to misappropriation of money and police investigation. It is not within his knowledge that any registered letter calling for his explanation for alleged fraud and misappropriation of funds was sent to his residential address and returned undelivered with postal remarks of party absent.

7. On the basis of the pleadings of the parties the following issues were framed :

ISSUES

1. Whether the workman was in continuous employment as a sub-staff since 17-08-1991 ?

OR

2. Whether the workman was working as a temporary sub-staff being engaged intermittently against leave vacancies ?
3. Whether the management was justified in not providing employment/refusing employment with effect from 24-6-2001 ?
4. If not, to what relief the workman is entitled to ?

8. From the side of the 2nd Party-Workman Shri J.K. Nayak has examined himself as W.W. 1 and proved certain documents marked as Ext. 1 to Ext. 9/3. The 1st Party-Management examined Shri K.K. Nanda as M.W.-1 and exhibited three documents marked as Ext. A to Ext. C.

FINDINGS

Issue Nos. 1 & 2

9. Since both the issues are co-related have been framed in the alternative, they are taken up together.

10. The 2nd Party-workman has taken a plea that he was appointed as sub-staff by the 1st Party-Management after due selection and he joined his duties on 17-8-1991 and had been working since then continuously till his disengagement. On the other hand the plea of the

1st Party-Management is that the 2nd Party-workman is a temporary sub-staff empanelled as such being engaged intermittently against leave vacancies.

11. There is no dispute that the 2nd Party-workman was engaged on 17-8-1991 and he served in the various branches of the Bank i.e. Indian Bank such as Tulsipur, Cuttack, Rourkela Alba etc. The 2nd Party-workman in his oral evidence has stated that he worked in Tulsipur Branch from 17-8-1991 to 1996 and thereafter at Alba branch in Kendrapara District, Regional Office at Bhubaneswar, Danpur Branch in Kendrapara District, Regional Office at Bhubaneswar, Rourkela branch and thereafter at Mangalabag branch in Cuttack. From Mangalabag branch at Cuttack he was disengaged. On each occasion he was transferred, he was given a letter to be delivered in the other branch where he was to join, but he has not produced any of the copies of such letters. He has also not given the details of stay or duration of his service at different branches of the Bank to prove the fact that he was in continuous employment of the 1st Party-Management since 17-8-1991. He has filed the xerox copy of the Muster Roll from June, 1999 to March, 2001 as Ext. 8. It only shows that he had worked with the 1st Party-Management only for the above period. But his oral statement given on oath has not been contradicted by any evidence of the 1st Party-Management. However the oral evidence of the 2nd Party-workman cannot be treated as sufficient to prove the fact that he was in continuous employment of the 1st Party-Management since 17-8-1991 as it lacks the exact period of his employment in different branches of the Bank. This might go to show that the 2nd Party-workman was engaged intermittently as a temporary sub-staff against the leave vacancies of the permanent sub-staffs. He has admitted in his cross-examination that he was selected and empanelled as temporary messenger but has denied the fact that he was being engaged as and when required under the exigencies. He has further admitted that he was not entitled to avail LTC or E.L. and earning wages for the days of his absence. That means that he was earning wages only for the days of his employment purporting that he was being engaged in the leave vacancies of permanent sub-staff in different branches. In a letter dated 6-8-2002 raising dispute before the Assistant Labour Commissioner (Central), Bhubaneswar marked as Ext.-3 he has asserted in its para-7 that he (the workman) was engaged in the leave vacancies of permanent sub-staff in different branches. The xerox copy of Muster roll (Ext.-8) also shows that he was paid only for the days he worked in the Bank. Therefore, it becomes abundantly clear that the 2nd Party-workman was a temporary sub-staff being engaged intermittently against leave vacancies. There is no proof that he was in continuous employment of the Bank without any break since 17-8-1991. The issue no. 1 is accordingly decided in the negative and issue no. 2 in the affirmative.

Issue No. 3

12. According to the 2nd Party-workman he went on leave for one month from 7-4-2011 due to illness and after recovery from illness after one month he reported for duty in the Cuttack Main Branch, but his joining report was not accepted and he was advised to report at Tulsipur branch, which was his original place of posting. Then he reported for duty at Tulsipur branch but there also his joining report was not accepted and he was not given duty. Thereafter he reported the matter to the Assistant General Manager, but nothing was done and finally he was refused employment.

13. In reply to these allegations the 1st Party-Management has stated that there were complaints from the customers of Cuttack branch that he had misappropriated funds given to him by them for depositing the amounts in their accounts with the Bank and demanded and received bribe for opening savings bank account and issuing cheque book. The complaints were investigated and after finding a prima-facie case FIR was lodged against the 2nd Party-Workman with the Mangalabag P.S., Cuttack which was duly registered. After happening of these events the 2nd Party-Workman did not report for duty for fear of arrest and turn up at any of the branches where he was engaged intermittently. Therefore, it was decided to stop the intermittent engagement of the 2nd Party-workman during the pendency of the departmental action/criminal case. At the same time it has been asserted that till the completion of the departmental/criminal proceedings Shri Naik's utilization as temporary sub-staff cannot be considered.

14. The 2nd Party-workman has stated in his evidence that he was refused employment from 6-5-2001 without any notice or prosecution/punishment by the 1st Party-Management. He has denied receipt of any intimation either from police or otherwise regarding any case pending or filed against him for the alleged misappropriation of funds and for taking bribe. He has also denied suggestion of voluntarily remaining absent after knowing about the complaints. He has also denied the fact of voluntary abandonment of job being afraid of the allegations made against him and to avoid police arrest etc. The sole management witness No. 1 Shri K.K. Nanda has admitted in the concluding lines of his cross examination that "No charge-sheet has been issued and no enquiry has been conducted as the workman did not turn up. On the basis of the complaint letters preliminary investigation have been conducted. No investigation report was prepared and submitted before the tribunal." Prior to it he has stated in his examination-in-chief that "I have received two allegations against the workman during my incumbency. One complainant against the present workman is Shri Purushootam Behera and another complainant against the workman is Shri Samir Ranjan Nayak. The

allegation of Shri Purushootam Behera is that he has paid certain amount to the workman to deposit in his (Purushootam's) S.B. Account, but he has not deposited the said amount in his S.B. Account. There is another allegation of Shri Purushootam Behera is that he has opened an Account in the Branch for immediate receipt of cheque book he has bribed the workman Rs. 200. Another complainant Shri Samir Ranjan Naik. His complaint is that he has deposited Rs. 7500 for credit of his loan account through the workman but actually the 2nd Party-Workman has not deposited into the account of Shri Samir Ranjan Nayak. Shri Samir Ranjan Nayak made a complaint against the workman on 28-5-2001. I made a preliminary enquiry and reported the episode/facts to my superior at circle office, Bhubaneswar. We have filed an FIR against the workman at Mangalabag Police Station. Ext.-A is the certified copy of the FIR". He has further stated that a letter calling for the explanation of the workman was sent through registered post at the permanent address of the workman which was returned by the postal authority with remark "party absent". The returned registered letter has been filed as Ext.-B. On going through the said letter it is revealed that certain allegations with regard to the complaints of Shri P. Behera and S.R. Nayak and on the basis of some inspection report were made against the 2nd Party-Workman and his explanation on the points was called for within fifteen days from the receipt of the letter. This letter is dated 2-1-2003. In this letter nothing has been said about unauthorized absence from duty of the 2nd Party-Workman and his explanation for such absence. Therefore, it proves false, as alleged by the 1st Party-Management, that the 2nd Party-Workman was sent a letter calling for his explanation for his unauthorized absence from duty.

15. It is the case of the 2nd Party-Workman that he went on one month's leave for illness from 6/7-4-2001 and on recovery after one month he reported for duty on 6-5-2001 but his joining report was not accepted and he was advised by the Branch Manager of the Mangalabag Branch, Cuttack to report at Tulsipur Branch where also his joining report was not accepted and he was not given duty. Thereafter, after lapse of a period of one year and one month he made representation to the Assistant General Manager, Bhubaneswar, but nothing was done and finally he was refused employment. The photostat copies of the letter sent to the Assistant General Manager, Bhubaneswar, acknowledgment and registry receipt marked as Ex.-2/2, 1 and 2/2 have been filed by him. He has also proved letter dated 6-8-2002 sent to the Assistant Labour Commissioner (Central), Bhubaneswar raising the dispute. Although the above facts have been denied by the 1st Party-Management in its written statement, but its witness M. W.-1 has not said anything regarding falsity of the above facts. Therefore they are taken to be true and it is held that when the 2nd Party-Workman reported

for duty on 6-5-2001 he was denied employment. The reason assigned behind refusing employment to the 2nd Party-Workman is stated to be the allegations of misappropriation of funds of customers and taking bribe for opening Savings Bank Account and issuing cheque book. But these alleged complaints were not in picture on the date of reporting for duty by the 2nd Party-Workman after recovery from illness i.e. on 6-5-2001. The alleged complaints, as stated by M. W.-1 Shri K.K. Nanda were dated 31-5-2001 and 16-11-2002 made by Shri Purushootam Behera and dated 18-5-2001 and 21-11-2002 made by Shri Samir Ranjan Nayak. The FIR was lodged on the basis of these complaints on 19-12-2002. The certified copy of the FIR has been filed as Ext.-A by the 1st Party-Management which also certifies the above dates of the complaints. Therefore there was no justifiable cause or ground for refusal of employment to the 2nd Party-workman on 6-5-2001. More-so, no departmental enquiry was conducted against the 2nd Party-workman on these complaints. Neither he was charge-sheeted nor given any opportunity to explain about his conduct and veracity of the complaints. Thus the principles of natural justice were violated while accepting these complaints and refusing employment to the 2nd Party-Workman. It is proved from the xerox copy of the Muster Roll Ext.-8 filed by the 2nd Party-Workman that he had rendered 240 days continuous service during the period of 12 calendar months preceding the date of refusal of employment. Therefore, under the statutory provisions of Section 25-F of the Industrial Disputes Act, 1947 he was required to be given one month's notice in writing indicating the reasons for retrenchment or one month's wages in lieu of such notice along with retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. The 2nd Party-Workman was engaged by the 1st Party-Management for the first time on 17-8-1991 and according to the 2nd Party-Workman he rendered service till 6-4-2001, though it is not proved that the continuous service in the aforesaid period was rendered by him. But it has been proved that he has rendered service during the aforesaid period at several branches of the Bank as a temporary sub-staff against leave vacancies of the permanent sub-staff. Therefore his discontinuance or termination from service is illegal and unjustified and it cannot be said that the 1st Party-Management was justified in not providing or refusing employment to the 2nd Party-Workman with effect from 6-5-2001. This issue is accordingly decided in favour of the 2nd Party-workman and against the 1st Party-Management.

Issue No. 4

16. For the findings recorded above, the disengagement or technically say retrenchment as per Section 2(oo) of the Industrial Disputes Act, 1947 being held illegal and unjustified the 2nd Party-Workman is

entitled to reinstatement in the post on which he was engaged before his disengagement. As the 2nd Party-workman was engaged as a temporary sub-staff against leave vacancies of permanent sub-staff, he is not entitled to receive full back wages for the period of his disengagement. But I think it proper and justified in the facts and circumstances of the case that he be given a compensation of Rs. 1,50,000 for the period of its illegal and unjustified disengagement. I order accordingly. The 1st party-Management, is directed to give him employment and pay compensation as ordered above within a period of three months from the date of publication of the award.

17. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1841.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकाता डाक लेबर बोर्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 41/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-32012/1/2004-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1841.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Dock Labour Board and their workmen, which was received by the Central Government on 15-6-2011.

[No. L-32012/1/2004-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 41 of 2004

PARTIES:

Employers in relation to the management of Calcutta Dock Labour Board

AND

Their workmen

PRESENT:

Mr. Justice Manik Mohan Sarkar, Presiding Officer

APPEARANCES:

On behalf of the Management : Mr. K.K. Barua, Personnel Officer

On behalf of the Workmen : Mr. M.K. Barman, Ld. Advocate

State : West Bengal

Industry : Port & Dock

Dated : 6th May, 2011

AWARD

By Order No. L-32012/1/2004-IR(B-II) dated 29-09-2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Calcutta Dock Labour Board in discontinuing with the services of Mr. Sk. Jamaluddin, Carpenter w.e.f. 5-11-2002 without any notice or enquiry is legal and justified? Whether such denial of employment w.e.f. 5-11-2002 whether retrenchment? If so, whether Mr. Sk. Jamaluddin is entitled for reinstatement with full back wages or not? If not, what relief he is entitled to?"

2. The story of the workman in his written statement of claim is that he was engaged by the employer on and from 6-12-1976 as a part-time Carpenter for working 16 days in a month which was to be continued for 3 months initially and subsequently he was engaged by the employer as a part-time Carpenter and was allowed to work for 24 days in a month continuously for more than 26 years and with effect from 05-11-2002 he was not allowed to work any more without any proper notice and at that stage the workman used to get Rs. 2100 per month towards his wages. During his period of service, workman was permitted to put his signature in the attendance register of the C.D.L.B. in its Engineering Section situated at Brooklyn in Garden Reach and the period of duty of the workman was from 9 A.M. to 5 P.M. on every working day. The workman claims that he was being paid bonus every year though he was not so paid in the year 2002 and he was not given benefit for contribution to P.F. Since after 05-11-2002, the workman concerned made representations to the Deputy Chairman, Calcutta Dock Labour Board on 11-11-2002, 21-11-2002 and 25-11-2002 and since the employer made no reply to the same, he applied to the Regional Labour Commissioner (Central) in Kolkata for conciliation and failure of which resulted the present reference.

3. In the written statement on behalf of the management, it has been stated that there was no relationship of master and servant in between the management and the alleged workman nor there is any post or vacancy as Carpenter and consequently no pay scale is fixed for such a post and the alleged workman was never employed by the management. But, it has been stated that his service as Carpenter was availed of, as and when necessary and for that purpose he used to be paid honorarium though there was no contract of employment with him and the nature of his job was also not perennial in nature and his service was not required throughout the year since he was never appointed on any permanent post or vacancy either as part-time or full-time employee. Since carpentry work was reduced for various reasons, further engagement of this workman was not required and so he was not engaged since 05-11-2002 nor any other Carpenter was engaged after the said date. The management claimed that the present workman is not entitled to any notice prior to his discontinuation. It is further stated that in terms of a letter No. EM-129 dated 03-11-1976 issued by the Administrative Body of the Board, Sk. Jamaluddin used for work for 2 days in a week in C.D.L.B. Hospital and in other 2 days in different offices of the Board under the control of the Medical Officer (Admn.) and Assistant Engineer of the Board and his attendance was recorded in register/log book as per direction given in the letter and, thereafter, due to close down of different offices of the Board on economy measures to obviate financial crisis of the Board, main area of carpentry work was saturated in Board's quarters at Brooklyn Depot and on receipt of certificate issued by the said officials every month showing attendance of the present worker honorarium for each month was being paid by the Board. The management has denied any schedule working hours for this workman and about payment of any bonus to him every year. In letter No. EM-129 dated 03-12-1976 in respect of the workman's temporary engagement as part-time Carpenter, it was categorically mentioned that he would be paid honorarium @ Rs. 250 per month subject to deduction of his such honorarium as pro-rate basis for absence on any working day and he would not be entitled to any other benefit as enjoyed by the regular employees of the Board. Since carpentry work was done away after discontinuation of the workers' quarters at Brooklyn site of the Board, there was no scope for deployment of the workman for carpentry work and since the said quarters were ultimately close down the service of the Carpenter was not required any more.

4. A rejoinder, as usual, was filed by the workman concerned meeting the statements made by the management in its written statement by way of denying the averments made by the management against him and also by way of repetition of the story made by him in his statement of claim.

5. Admittedly, the workman concerned was engaged by the Calcutta Dock Labour Board with an appointment letter which has been made Exhibit M-1 in the present reference and therein it is found that the said workman Sk. Jamaluddin was appointed as a part-time Carpenter on purely temporary basis for a period of 2 months at an honorarium @ Rs. 250 per month and he was to work for 4 days in a week at any of the offices of the Board. This appointment letter issued by the Calcutta Dock Labour Board with the signature of its Administrative Body does not support the claim of the management that there is no relationship of employer and employee in between the Calcutta Dock Labour Board and the workman concerned. In respect of his disengagement the authorized representative of the management, Mr. Barua submitted that since it was an appointment for a fixed period of time, his disengagement was automatically done by efflux of time though he was reemployed from time to time with fresh appointment letters and when there was no job of carpentry in the establishment of the management, he was not engaged having no job. It is stated by Mr. Barua that the workman had no fixed period of duty hours though he was to work during the day time only and no embargo was put on him of doing job of other employment in course of his engagement under the Board. It is further stated by Mr. Barua that there was/is no post of Carpenter under the management of the Board, nor any scale of pay has been prescribed for any such post by the Board. It was admitted by Mr. Barua that from time to time the amount of honorarium to this workman was enhanced by way of different resolutions and those were done on purely humanitarian ground and sometimes ad-hoc ex-gratia was used to be paid to him occasionally during festive season and for this reason, he referred to Exhibit M-2 which is another letter of appointment of the workman as part-time Carpenter and also Exhibits M-3 and M-4 which are some resolutions in respect of enhancement of the monthly honorarium of the workman as part-time Carpenter.

6. Mr. M.K. Barman, Ld. Advocate for the workman submitted that the workman concerned was engaged in the year 1976 and though he was engaged for a temporary period in the said appointment letter, as per admission on the part of the management, he was continued to be re-appointed periodically and his service was availed of by the management throughout the years upto 5-11-2002 and initially he used to work for 4 days a week and thereafter 6 days a week and thereby the very admission on the part of the management shows that he worked all through for a period of 26 years and thus at the time of his disengagement and he was entitled to the mandatory benefits as provided under Section 25F of the Industrial Disputes Act, 1947. Non-compliance of the same entitles

the workman concerned to be reinstated with full back wages.

7. On a brief approach from the side of the respective parties it is found that the workman concerned was appointed as a part-time Carpenter and he was used to be paid an honorarium @ Rs. 250 per month initially and by way of periodical enhancement, the said rate of honorarium reached to the level of Rs. 2100 per month. The copies of resolutions which are Exhibits M-3 and M-4 show that the workman concerned was also provided with the benefit of ex-gratia from time to time. If the present workman was used to be engaged occasionally and disengaged, this kind of periodical enhancement of the honorarium together with the ex-gratia payment would not have occurred in the mind of the management and it was so done by treating the present workman as a part-time employee of the management Board concerned and thus a continued service of the present workman has been well established from the materials supplied by the management itself through Exhibits M-1 to M-4.

8. In that case, I am of the view that disengagement of the present workman Sk. Jamaluddin without compliance of the mandatory provision of Section 25F of the Industrial Disputes Act, 1947, was not properly done and the workman concerned is definitely, entitled to the said benefit under Section 25F of the Act and the discontinuation of the workman with effect from 5-11-2002 is not only irregular but also illegal.

9. Since the disengagement of the workman concerned is found to be illegal, automatically a relief is considered for the reinstatement of the workman concerned with full back wages as it was being done earlier. But the present position of law is otherwise as the Hon'ble Apex Court, through different decisions has discouraged reinstatement of such retrenched workers with full back wages in view of the principle that there is no sanctioned post or sanctioned pay scale in respect of the work of the workman concerned, reinstatement of the workman concerned should be avoided and also it is stated that the back wages should not be given since it would cause unnecessary financial burden upon the employer. However, the Hon'ble Apex Court in some recent decision has suggested payment of compensation in lieu of reinstatement with back wages as being the better benefit for such retrenched workers. Payment of back wages has been further discouraged since a volume of recourse to the investigation is to be done as to whether the workman concerned was not employed otherwise in the mean time.

10. In such circumstances, I feel that the justice will be deemed to have been done in favour of the workman if the management concerned is directed to pay him a one time payment towards compensation for such illegal termination or disengagement. In view of such finding, the management is directed to pay a lumpsum

compensation of Rs. 50,000 (Rupees fifty thousand only) as one time payment to the workman concerned within a period of three months from the date of publication of this Award.

Accordingly an Award is passed.

Dated, Kolkata,
The 6th May, 2011.

JUSTICE MANIK MOHAN SARKAR, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1842.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 461/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/72/2003-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1842.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 461/2003) of the Labour Court, Pune, (Maharashtra) as shown in the Annexure in the industrial dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/72/2003-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI S.G. DESHMUKH, PRESIDING OFFICER, SECOND LABOUR COURT, PUNE

Reference (IDA) No. 461 of 2003

BETWEEN:

The Sr. Branch Manager,
Vijaya Bank, 1159,
Sadashiv Peth, Pune-30

... First Party

AND

Shri Chandrakant B. Kamble,
22/10, New Range Hills,
Khadki, Pune-20

... Second Party

CORAM: SHRI S.G. DESHMUKH

APPEARANCES:

Shri M. V. Kini, Advocate for 1st Party

Shri TD Chavan, Advocate for 2nd Party

AWARD

(Date 20-10-2010)

1. On failure of conciliation, this reference is preferred by the Under Secretary, Government of India, Ministry of Labour, New Delhi for adjudication in the matter of reinstatement of second party with full back wages.

2. Second party filed Statement of Claim in pursuance of notice at Exh. U-9. The case of the second party is as under :

"It is contended that first party bank is one of branch run by Government of India under the control of Reserve Bank of India. There are 35 employees. Day-to-day affairs of the first party bank supervised and controlled by Shri Hegade, Manager. Second party joined services of the first party from 03-12-93 as a sweeper. His last drawn salary was Rs. 2200 p.m. He has served for more than 11 years. He worked continuously for 240 days in each calendar year. His past service record is clean and unblemished. As he demanded facilities illegally his services were terminated w.e.f. 01-07-2002 by issuing charge sheet dt. 17-10-2001 and holding enquiry hastily without assigning any reason and without complying provisions of Sec. 25(F) of I.D. Act. Demand letter was issued to the first party calling upon first party to reinstate him. First party neither replied nor complied as demanded by letter. Hence, this reference.

3. First party appeared and filed its written statement at Exh. 14, wherein first party denied the claim of second party in toto. It is contended that on commission of misconduct, services of second party were terminated by holding enquiry. Therefore, reference is not tenable and hence, it is liable to be rejected.

4. Following points arise for my determination. My findings thereon and reasons for the same are as under :

Points	Findings
1. Does the second party prove that he was working with the first party as a Sweeper ?	Yes
2. Does the second party prove that his services are illegally terminated by the first party w.e.f. 1-7-2002 ?	Yes
3. Whether second party is entitled to the reliefs claimed ?	Yes
4. What order ?	See final order

5. To establish his claim, second party has filed his affidavit in lieu of examination in chief at Exh. U-16 and closed evidence. The second party has also filed documents below list Exh. U-20.

REASONS

6. Point Nos. 1 to 3 : In support of claim, second party in his affidavit in lieu of examination in chief has stated on oath mostly facts contended in the Statement of Claim. In brief it is stated that he joined services of the first party from 3-12-93 as a Sweeper. His last drawn salary was Rs. 2200 p.m. He has served for more than 11 years. He worked continuously for 240 days in each calendar year. His past service record is clean and unblemished. As he demanded facilities, illegally his services were terminated w.e.f. 1-7-2002 by issuing charge sheet dt. 17-10-2001 and holding enquiry hastily without assigning any reason and without complying provisions of Sec. 25(F) of I.D. Act. Hence, this reference for reinstatement with full back wages.

7. This evidence of the second party is not challenged by the first party though opportunity was with the first party.

8. Though opportunity was with the first party, first party did not enter into witness box to deny the evidence of the second party. No reasons are made out to discard evidence of the second party. Therefore, I am of the opinion that second party was working with the first party as a Sweeper and his services were illegally terminated by the first party w.e.f. 26-02-2002. Therefore, second party is entitled to reinstatement with continuity of service and full back wages. Hence, I answer all the points in the affirmative and consequently pass the following Order :

ORDER

1. Reference is hereby allowed.
2. First party is hereby directed to reinstate second party on his original post with continuity of service and pay him full back wages w.e.f. 1-7-2000.
3. First party is further directed to pay Rs. 1,000 towards costs of this reference to the second party.

Place : Pune
Date : 20-10-2010

S.G. DESHMUKH, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्र. आ. 1843.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या

876/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-17012/1/1998-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1843.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 876/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 15-6-2011.

[No. L-17012/1/1998-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case I.D. No. 876/2005

Registered on 09-09-2005

Shri Hukam Chand,
S/o Sh. Pyare Lal,
R/o V. & P.O. Rawalddhi,
Tehsil & District Bhiwani.

... Applicant

Versus

The Divisional Manager,
LIC of India,
Divisional Office,
Karnal

... Respondent

APPEARANCES :

For the workman : None

For the Management : Sh. P.K. Longia, Advocate

AWARD

Passed on 26th April, 2011

Central Government vide Notification No. L-17012/1/98-IR(B-II) dated 4-12-98, by exercising its powers under Section 10, Sub section (1), Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following industrial dispute for adjudication to this Tribunal :

"Whether the action of the management of Life Insurance Corporation of India (Karnal) in terminating the services of Sh. Hukam Chand

S/o Sh. Pyare Lal, Waterboy/Peon w.e.f. 8-7-1996 is just and legal? If not, to what relief is the workman entitled to and from what date?"

The workman has raised an industrial dispute stating that he had joined Life Insurance Corporation of India, Charkhi Dadri on 6-3-1995 as a permanent Peon but his services were terminated orally on 9-7-1996 without complying with the provisions of Section 25F of the Act, though he had served for more than 240 days. The workman has, however, admitted that he had been allowed to work under fictitious name of Ashok and Rohtash also though salary had been paid to him. In his claim statement the workman also stated about an inspection of Charkhi Dadri Branch done by Inspection Department, Central Office, Bombay wherein it had been observed by the Inspecting Officer that the workman was engaged as Badli worker and on some occasion he was paid under dummy names of Ashok and Rohtash. He has claimed his reinstatement as his services were terminated illegally in violation of Sections 25F and 25G of the Act.

The claim was contested by the respondent/management. It was stated that the workman had been employed on temporary basis as casual labour in March 1995 for a few days by the then Branch Manager and was also subsequently employed under different names for few days at a time. The Branch Manager had no powers under Staff Regulations to make any appointment. In Audit Report of 1997 of the Branch Office this irregularity was pointed out. It was denied that the workman served and worked continuously from 6-3-95 to 07-07-96 as a Peon and he had continuously worked as such for more than 240 days. The illegal employment of a workman by the Branch Manager does not vest in the workman any right to continue in service. He had been employed by the Branch Manager to do some odd jobs only for different works and for different periods. He is not entitled to any relief.

From the pleadings of the parties the following issues arise for consideration :

1. Whether the workman is entitled to the protection of Section 25F of the Act and whether the services of the workman were terminated in violation of Sections 25F and 25G of the Act?
2. To what relief, if any, the workman is entitled?

In support of his claim the workman filed and tendered his affidavit, while on behalf of respondent/management Basant Ballabh, Assistant Administrative Officer, District Office, Karnal tendered his affidavit. Parties have filed certain papers also but they were not tendered in evidence.

After receiving back the case by transfer from C.G.I.T.-I, Chandigarh, the representative of the workman did appear on 23-04-2010, but thereafter on 19-05-2010, 04-06-2010, 08-07-2010 none appeared for workman and the case was ordered to proceed ex-parte against workman on 08-07-2010 and the case was fixed for ex-parte arguments of the management for 12-08-2010 also. On 12-08-2010 also none appeared for workman and the arguments of the management counsel were heard.

I have considered the material on record and also the arguments advanced on behalf of the respondent/management. My findings on various issues are as follows :

Issue No. 1

According to the workman he had joined the respondent office at Charkhi Dadri Branch as Peon on 06-03-1995 and his services were terminated on 09-07-1996 without complying the provisions of Section 25F of the Act and in violation of Section 25G of the Act. On 9-7-1996 when he went to report for duty he was not allowed to join and was terminated orally.

Respondent/Management admits the employment of the workman but according to it the appointment was illegal and without authority. The workman had been appointed by the Branch Manager, who was not competent to appoint any person. The Branch Manager had paid him under dummy names and the workman did not complete 240 days' service in the 12 calendar months preceding the date of his termination. The management denies the retrenchment of the workman on the ground that his appointment was illegal.

The relevant question in the first place is whether the workman had been in continuous service for not less than one year under the employer as per definition clause of Section 25B of the Act, according to which a workman shall be deemed to be in service under an employer for a period of one year if the workman during a period of 12 calendar months preceding the date of his termination has actually worked for not less than 240 days. It is for the workman to prove that he has actually worked for not less than 240 days in preceding 12 calendar months. In his affidavit he has alleged that he was allowed to work as Peon for more than 240 days in fictitious names of Ashok and Rohtash also. Regarding working days he has referred pay vouchers in his affidavit but the pay vouchers have not been filed alongwith affidavit. They are Annexures (P-1) of his claim statement. The workman failed to tender them in evidence at the time of his oral statement. Hence, the alleged pay vouchers cannot be read into evidence. Moreover, they are faded photocopies and an illegible. On the basis of these copies of vouchers it cannot be inferred that the workman worked for 240 days during a period of 12 calendar months preceding the date of his termination.

It is important to note that the management has denied that the workman had worked for more than 240 days continuously preceding the date of his termination. Management witness has very categorically stated that it is incorrect to suggest that the workman had served for 240 days continuously preceding the date of his disengagement. Since the workman has failed to prove that he worked for 240 days during the period of 12 calendar months preceding the date of his termination, he is not entitled to the protection of Section 25F of the Act. It was not necessary for the respondent to comply with the conditions provided under Section 25F of the Act. His termination cannot be held bad on account of non-compliance of Section 25F of the Act.

The workman has alleged the violation of the Section 25G of the Act also but neither in his claim statement nor in his affidavit he had named the persons junior to him and who were retained in service by the management.

It is therefore, clear that the termination of the workman cannot be assailed on the grounds of violation of Sections 25F and 25G of the Act. Workman in his cross-examination has admitted that the post against which he was appointed was never advertised by the management. He was not sponsored by the Employment Exchange and he had been called by the Branch Manager N.C. Mehta personally. The learned counsel for the management has referred provisions of Regulation 6, read with Schedule 1 of the Life Insurance Corporation of India (Staff) Regulations, 1960. According to which appointing authority of all Class IV in the Corporation is the Divisional Manager of the Corporation. According to Regulation No. 8, the Power to make temporary appointment vests with the Managing Director/Executive Director (Personnel)/Zonal Managers/Divisional Managers of the Corporation. He also submits that there was an audit objection about the workman that he was being employed as Badli worker by N.C. Mehta, Branch Manager and under fictitious names and, therefore, he was disengaged. He was not entitled to continue in service and premium cannot be given on error committed in granting such appointment. I agree with the arguments of the learned counsel for the management and accordingly, I hold that the action of the management in terminating the services of the workman is just and legal. Issue No. 1 is decided against the workman.

Issue No. 2

From the findings returned above, it is clear that the action of the management in terminating the services of workman is just and legal, and the workman is not entitled to any relief. The reference is answered against the workman. Let two copies of award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 15 जून, 2011

क्रा. आ. 1844.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 36/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-35011/6/2007-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1844.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the industrial dispute between the management of Cochin Port Trust and their workman, received by the Central Government on 15-6-2011.

[No. L-35011/6/2007-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer

(Friday the 29th day of April, 2011)

I.D. 36/2007

Union : The General Secretary,
Cochin Port Staff Association,
Wellington Island,
Cochin-682 009

By Adv. Shri A. V. Xavier

Management : The Chairman,
Cochin Port Trust,
Wellington Island,
Cochin-682 003

By Advs. M/s. Menon & Pai

This case coming up for final hearing on 26-4-2011 and this Tribunal-cum-Labour Court on 29-4-2011 passed the following.

AWARD

This is a reference made under Section 10 (1) (d) of Industrial Disputes Act, 1947. The reference is:

“Whether the action of the management of Cochin Port Trust in denying the promotional posts of skilled artisans HSK-I, Assistant Foreman and Foreman to the Electronics Technicians in comparison with the Electrical Technicians is fair and justified? If not, to what relief they are entitled?”

2. The allegations in the claim statement of the union, in brief, are that Electronics Technicians are not having the same promotional avenues as in the case of Electrical Technicians even though the basic qualification for both the posts are the same as per the recruitment rules for Skilled Artisans in various trades in the management. Electronics Technicians were recruited in the Port Trust only at the time of commissioning of Container Terminal in 1990. Some of them are working on deputation in M/s India Gateway Terminal Private Limited (IGTPL). Their service conditions and promotional opportunities are governed by the existing Port Rules as per their Transfer Agreement. Both the above said categories were classified as Skilled Artisans in the Chakravarthi Committee Report of the year 1997. But the management has not provided career progression for Electronic Technicians. Electrical Technicians are provided with a career progression as given below:

(a) Electrical Skilled Artisans	: Rs. 4300-120-5260-130-8120
(b) Electrical Skilled Artisans HSK	: Rs. 4640-140-5760-170-9500
(c) Electrical Skilled Artisans HSK-I	: Rs. 5000-150-5450-200-10850
(d) Foreman	: Rs. 6170-230-7320-245-11975

The hierarchy for Electronics Technicians is only with the following posts:

(a) Electronic Skilled Artisans	: Rs. 4300-120-5210-130-8120
(b) Electronics Skilled Artisan HSK	: Rs. 4640-140-5760-170-9500

Technicians (Electrical) are entitled to the promotions up to the post of Foreman while Technicians (Electronics) can have promotion only to the post of HSK. Technicians (Electronics) having the same qualification and seniority are discriminated in the matter of promotion and hence the hierarchy to both the categories is to be equated in view of the recommendations of the Chakravarthi Committee Report. The action of the management in denying the promotional post of Skilled Artisans HSK-I, Assistant Foreman and Foreman to the Electronic Technicians is not fair and justifiable. Hence the management is to be directed to extend the same hierarchy available to Technicians (Electrical) to Technicians (Electronics) with retrospective effect from the due dates of promotion.

3. The contentions put forward in the written statement filed by the management are that five persons with ITI qualification and three years experience were appointed as Technician (Electronics) through direct recruitment at the time of commissioning of Container Terminal in Cochin Port Trust in the year 1990. As per the Schedule of Employees, wherein hierarchy of posts is given, Technician (Electronics) comes under the Executive Engineer (Electrical), Container Terminal. It is the entry post in that cadre and there is only time bound promotion to the post of HSK. HSK-I, Assistant Foreman and Foreman are not promotion posts of that cadre. The claim for promotion not envisaged in the Schedule of Employees and the Recruitment Rules is unacceptable. Electricians referred to as Electrical Technicians in the reference order is included in the feeder category of HSK-I (Ele.), Assistant Foreman (Ele.) and Foreman (Ele.). Technicians (Electronics) are not included in the feeder category of those posts. They cannot be compared with electricians. Out of the five persons appointed as Technician (Electronics) one had resigned from service. Another one has got promotion as Junior Engineer (Electronics) since he is having diploma qualification. The remaining three were given promotion to the post of Technician HSK as per the recommendation in the Chakravarthi Committee Report. There is no scope for creation of higher posts for giving promotion to them. The management cannot also create new posts for providing promotional avenues for Technician (Electronics) without the approval of the Government of India. Hence the action of the management in denying the promotional post of Skilled Artisans HSK-I, Assistant Foreman and Foreman to the Electronics Technicians is justifiable:

4. After the filing of the written statement union filed a rejoinder denying the contentions in the written statement and reaffirming the allegations in the claim statement.

5. For the purpose of deciding the reference WW1 was examined from the side of the union. For the management MW1 was examined and Exts. M1 to M8 were got marked.

6. The points for determination are :

1. Whether the Electronics Technicians are entitled to promotion to the post of Skilled Artisan HSK-I, Assistant Foreman and Foreman as in the case of Electrical Technicians ?
2. Whether the action of the management in denying promotion to the Electronics Technicians to those posts is fair and justifiable ? If not, what relief they are entitled to ?

7. Point Nos. 1 & 2 : Electrical Technician is referred to as Electrician in Ext. M1 Recruitment Rules and Ext. M3

Guidelines. Electronics Technician is referred to as Technician (Electronics). HSK-I, Assistant Foreman and Foreman are the promotional posts of Electrician. Those are not the promotional posts of Technicians (Electronics). They want to have promotion to those posts based on the basic qualifications for entry into those two services, the seniority and the recommendations of the Chakravarthi Committee Report. Even though it is pointed out in the claim statement that there can be creation of posts for the purpose of promotion since they can be treated as Skilled Artisan in view of the Chakravarthi Committee Report it was given a go by in the rejoinder by expressly stating in para 8 that the union is not demanding to create post and that the demand is to give promotion to Technician (Electronics) as in the case of Technician (Electrical).

8. Five posts of Technician (Electronics) were created at the time of commissioning of Container Terminal in Cochin Port Trust. They were not having promotional avenues until the filing of the Chakravarthi Committee Report. Based on the recommendation of the Chakravarthi Committee Report time bound promotion was given to the post of HSK. In the claim statement it is alleged that in the Chakravarthi Committee Report Technician (Electronics) were included as Skilled Artisan. It was denied by the management in para 7 of the written statement. Union did not produce the copy of that report and no endeavour was made for its production by the management. Hence it is not possible to have a clear idea of the recommendations in the Chakravarthi Committee Report. Ext. M3 guidelines will go to show that they are also included as Skilled Artisans. They cannot claim for promotion to the post of HSK-I, Assistant Foreman and Foreman saying that they are Skilled Artisans. The claim is mainly based on the recommendations of the Chakravarthi Committee Report. There is nothing on record to satisfy that any claim can be made for the promotion to those posts based on the recommendations in the Chakravarthi Committee Report.

9. Cochin Port Trust is one of the nine major Ports in India. There are Recruitment Rules, Schedule of Employees and Wage Revision Settlements for the employees. As per the Recruitment Rules, Guidelines and Schedule, Technician (Electronics) cannot claim promotion to the post of HSK-I, Assistant Foreman and Foreman. The post of Electricians were in existence at the time of establishment of Cochin Port Trust and those posts are included as their promotional posts. Electrician and Technician (Electronics) are two different categories. It is true that the educational qualification is ITI/ITC for both the posts. But it cannot be accepted as a reason for claiming promotion to posts which are not included as promotional posts. Without integration of the two services Technician (Electronics) cannot claim promotion to the post of HSK-I, Assistant Foreman and Foreman. Otherwise they are also to be included in the feeder category of those posts. Until then it cannot be said that the denial of promotion to

Technician (Electronics) to the promotional post of electrician is not fair and justifiable. Hence the action of the management in denying the promotional posts of HSK-I, Assistant Foreman and Foreman to the Electronic Technician in comparison with the Electrical Technicians is fair and justifiable.

In the result an award is passed finding that the action of the management of Cochin Port Trust in denying the promotional posts of skilled artisans HSK-I, Assistant Foreman and Foreman to the Electronics Technicians in comparison with the Electrical Technicians is fair and justifiable.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of April, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix

Witness for the Workman :

WW1 — Shri Damodharan K., Senior Accountant, Cochin Port Trust.

Witness for the Management :

MW1 — Shri Mathew Paul, Assistant Engineer, Cochin Port Trust.

Exhibits for the Workman : Nil

Exhibits for the Management :

- | | | |
|----|---|-----------------------------------------------------------------------------------------------------------------------------------------------|
| M1 | — | Photocopy of the Recruitment Rules for the post of Skilled Artisans (Various Electrical Trades) Electrical Division of the Cochin Port Trust. |
| M2 | — | Photocopy of Order No. A8/2235/CC/98-S dated 12-8-1998 of the management. |
| M3 | — | Photocopy of Guidelines issued by the Cochin Port Trust. |
| M4 | — | Photocopy of the service book of Shri V. G George. |
| M5 | — | Schedule of Employees as on 1-4-2006 of the Cochin Port Trust. |
| M6 | — | Schedule of Employees as on 1-4-2007 of the Cochin Port Trust. |
| M7 | — | Schedule of Employees as on 1-4-2008 of the Cochin Port Trust. |
| M8 | — | Photocopy of the letter No. IGT/Ele/Elect-Tec/07 dated 15-10-2007 of India Gateway Terminal Pvt. Ltd., Willingdon Island, Kochi. |

नई दिल्ली, 15 जून, 2011

का. आ. 1845.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/37/87) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/186/86-डी. II(ए)/आई आर (बी-II)]।

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1845.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/37/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12012/186/86-D. II (A)/IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/37/87

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Tulsidas, S/o Sahebadas,
Behind Syndicate Bank,
P. C. Bharveli,
Distt., Balaghat (M.P.)

... Workman

Versus

The Dy. General Manager,
Syndicate Bank, Zonal Office,
P.B. No. 4112, Neptune Towers,
Ashram Road,
Ahmedabad

... Management

AWARD

Passed on this 5th day of May, 2011

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/186/86-D. II (A) dated 16-4-1987 has referred the following dispute for adjudication by this tribunal :

“Whether the action of the management of Syndicate Bank, Bharveli Branch, PO Bharveli, Distt. Balaghat in stopping from work Shri Tulsidas S/o Saheblal, Peon-cum-attendant with effect from 4-6-85 is justified? If not, to what relief the worker is entitled to?”

2. The case of the workman, in short, is that the workman Tulsidas was appointed in the management Bank on 1-2-1983 and worked continuously till 30-6-85. The workman is entitled to be treated as permanent employee under Bank rules. It is stated that even if it is considered that the workman was employed purely on temporary basis against leave vacancies, the management cannot be allowed to employ new one after removing the workman. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, *inter alia*, is that the workman was engaged by the bank purely on temporary basis against the leave vacancies. This fact was known to the workman before engagement. He had been relieved thereafter. The Industrial Disputes Act, 1947 (in short 1947) is not applicable as his case covers under the provision of Section 2(oo) (bb) of the Act, 1947. It is stated that even if it is admitted that the action of the management was amount to retrenchment then he had also not worked 240 days during a period of 12 calendar months and violation of the provision of Section 25F of the Act, 1947 is not applicable. It is submitted that the action of the management is justified and the reference be answered in favour of the Bank.

4. On the pleadings of the parties, the following issues are for adjudication :

- I. Whether the action of the management in terminating the services of the workman w.e.f. 4-6-85 is justified?
- II. To what relief the workman is entitled?

5. Issue No. I

Before discussing the evidence, it is important to enumerate the facts which are admitted by the parties either in the pleadings or in the evidence :

1. The workman Shri Tulsidas was employed as temporary peon-cum-attendant by the Bank at Bharveli Branch and joined in January 1983.
2. He worked till May 1985 in the said branch of the Bank.
3. He was not given any notice while removing from service.
4. No retrenchment compensation was paid as has been provided under the provision of Section 25F of the Act, 1947.

6. Now let us examine the evidence adduced in the case. The workman has examined two witnesses including himself. He has not filed any documentary evidence. The workman Shri Tulsidas has supported his case. He has stated that he was employed by the Bank but appointment letter was not issued to him. He was stopped from work without any compensation. He worked continuously without any break. He has further stated that he draw his payment from his account. There is nothing in his cross-examination to disbelieve his evidence. Another witness Shri Yograj has come to support the case of the workman. He has stated that he had worked in the said branch of Syndicate Bank. He has stated that the workman was working continuously as peon in the said Bank. He is unable to say about the total days of work done by the workman in the Bank. The oral evidence shows that the workman was working in the Bank continuously as a peon.

7. On the other hand, the management has adduced oral and documentary evidence. The management has filed Attendance Register on the direction of the Court. The said Attendance Register is not specifically denied by the workman rather the documents are produced by the management at the instance of the workman. The Attendance Register shows that the workman worked in the Bank as temporary Sub Staff. His name appeared in the Register in the month of September to October 1983, May, 1984 and June, 1985 but the payment vouchers and the bank account of the workman show that he worked almost regularly. The management has filed 54 nos. of debit and credit vouchers in originals and 4 nos. of saving bank folios of account of Shri Tulsidas. The said vouchers and State Bank Folios are filed to show that the workman had worked in the Bank. These documents go to show that the workman had worked every month as has been alleged by him.

8. The management has also examined two witnesses. The management witness Shri-K. N. Bhatnagar was working as Manager of Bharveli Branch from 19-9-85 to 5-8-87. He was not working at the relevant time. He appears to be not competent to say that the workman had worked 240 days or more in a calendar year preceding the date with reference. His evidence appears to be not reliable. Another management witness Shri M. Divakar Hegde was working as Manager at the relevant time. He has supported the fact that the workman was engaged in the Bank purely on temporary basis. He has supported the documents filed by the management. In cross-examination at page 4 and 5, he has specifically admitted the days of work of each month done by the workman from January, 1983 to May, 1985. His evidence clearly shows that in the year 1983, he worked 242 days, in 1984—292 days and in the year 1985 till May he worked 112 days. It is also clear from his evidence that from June, 1984 to May, 1985, he worked 279 days during a period of twelve calendar months preceding the date with reference. There is no reason to disbelieve this witness

who was Manager at the relevant time. His evidence clearly established that the workman shall be deemed to be in continuous service for a period of one year under the Bank in accordance with the provision of Section 25B (2)(a) of the Act, 1947. It is established that he was in continuous service for a period of one year during a period of twelve calendar months preceding the date with reference. It is admitted fact that no notice and compensation was paid to him before removing from service. I find that there is violation of the provision of Section 25F of the Act, 1947 and therefore the termination of the workman w.e.f. 4-6-85 is unjustified and illegal. This issue is accordingly decided in favour of the workman and against the management.

9. Issue No. II

On the basis of the discussion made above, it is clear that the provision of Section 25F of the Act, 1947 is attracted and the procedure provided therein was admittedly not followed. Therefore the termination by the management was not justified. The learned counsel for the management has urged that the workman was in the employment of the management about 25 years back and therefore the relief of reinstatement appears to be not justified and one time compensation would meet the ends of justice. The learned counsel for the management has relied a decision of the Hon'ble Apex Court reported in 2011(1) MPLJ, Incharge Officer and another versus Shankar Shetty wherein the Hon'ble Apex Court has held that :

"We think that if the principles stated in Jagbir Singh, (2009) 15 SCC 327 and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000 (Rupees One Lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today filing which the same shall carry interest at the rate of 9 per cent per annum."

It is submitted that this case is also similar to the decision of the Hon'ble Apex Court. It is true that the workman was in temporary service about 25 years back. Considering the above aspect the management is directed to pay Rs. 1,00,000 (Rupees One Lac) in lieu of the reinstatement to meet the ends of justice within two months from the date of award. The reference is accordingly answered.

10. In the result, the award is passed without any costs.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MODH. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1846.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. I, धनबाद के पंचाट (संदर्भ संख्या 56/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार की 15-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/16/2006-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1846.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Dhanbad now as shown in the Annexure in the industrial dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 15-6-2011.

[No. L-12011/16/2006-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (NO. I), DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 56 of 2006

PARTIES:

Employers in relation to the management of
UCO Bank

AND

Their Workmen

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES :

For the Employers : Shri Sunil Kumar Choudhary,
Law Officer

For the Workman : Shri B. Prasad,
Union Representative

State : Bihar

Industry : Bank

Dated, the 19th May, 2011

AWARD

By Order No. L-12011/16/2006-IR (B-II) dated 14-6-2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by Clause (d) of Sub-sec. (1) of Sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of UCO Bank in imposing the punishment of removal from service on Shri Fulendu Rai vide order dated 5-11-2005 is justified and legal ? If not, to what relief the concerned workman is entitled ?”

2. In this case Shri B. Prasad, Union Representative, appearing on 22-12-2010 alongwith the concerned workman submitted by filing a withdrawal petition that the concerned workman, Fulendu Rai, does not want to contest the case to which the management has got no objection.

3. In view of such submission being made on behalf of the union, and the concerned I render a ‘no dispute’ award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1847.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान कन्स्ट्रक्शन कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 67/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-42012/79/2010-आई आर (डीयू)]
डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh, now as shown in the Annexure, in the Industrial Dispute between the employers

in relation to the management of Hindustan Construction Co. Ltd. and their workman, which was received by the Central Government on 15-6-2011.

[No. L-42012/79/2010-IR (DU)]
D.S.S. SRINIVASARAO, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

PRESENT :

Sri A. K. Rastogi, Presiding Officer

Case No. 67/2010

Registered on : 30-8-2010

Sh. Devi Dutt S/o Sh. Narinder Kumar,
VPO Raipur Sahoran,
Tehsil & Distt. Una (HP)

... Claimant

Versus

1. The Director, (HR), NHPC Office, Complex, Sector 33, Faridabad-121003
2. The Director, Hindustan Construction Co. Ltd., Head Office, Hinson House Lal Bahadur Shastri Marg, Vikroli (West), Mumbai
3. The General Manager, NHPC, CHEP Stage-III, Chamba (HP)
4. The Project Manager, HCC, CHP Stage-III, Village-Kalsuin, PO-Jhangi, via Mehla, Chamba (HP)

... Respondent.

APPEARANCES :

For the Workman : None
For the Management : Sh. V. K. Gupta and
Sh. Tarun Gupta

AWARD

Central Government vide Notification No. L-42012/79/2010-IR (DU) dated 13-8-2010, by exercising its powers under Section 10, Sub-section (1), Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following industrial dispute for adjudication to this Tribunal :

“Whether the action of the Management of Hindustan Construction Co. Ltd. in terminating the services of their workman Sh. Devi Dutt w.c.f. 1-2-2008 is legal and justified ? If not, what relief the workman is entitled to ?”

After receiving reference notices were issued to the parties to appear. The workman did not appear despite notices sent to him on 18-9-2010, 5-10-2010 and by

registered post on 24-12-2010. The respondents, however, put in their appearance through their counsel. As the workman did not appear despite notice sent to him by registered post and the notices were not received back undelivered, hence, the service was presumed on workman and as he failed to appear and file claim statement, the reference is answered against him. Two copies of the Award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1848.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.एस.एन.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/109 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-40012/41/2005-आई आर(डी यू)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1848.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/109 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No.-II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of BSNL and their workman, which was received by the Central Government on 15-6-2011.

[No. L-40012/41/2005-IR (DU)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

Sri K. B. Katake, Presiding Officer.

Reference No. CGIT-2/109 of 2005

Employers in relation to the management of
Bharat Sanchar Nigam Ltd

The Divisional Engineer,
B.S.N.L.,
Microwave Project, Barrack No. 2,
Prabhadevi Telephone Complex,
MTNL Marg, Dadar (W),
Mumbai-400 028.

AND

Their Workman.
Shri Anil Sakaria,
Unique Vaibhav, Wing 'F', Room No. 203,
Tirupati Nagar, M.B. Estate,
S. No. 423, Bolinj
Virar (W), Distt. Thane.

APPEARANCES :

For the Employer : Mrs. N. V. Masurkar,
Advocate.

For the Workman : Mr. M. B. Anchan,
Advocate.

Mumbai, the 5th April, 2011

AWARD

The Government of India, Ministry of Labour and Employment by its Order No. L-40012/41/2005-IR (DU), dated 26-9-2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of management of Bharat Sanchar Nigam Ltd., Mumbai in terminating the services of Shri Anil Sakaria is justified? If not what relief, Shri Anil Sakaria is entitled to?”

2. After receipt of the Reference from Ministry notices were issued to both the parties. In response to the notice the second party workman filed his statement of claim at Exh. 5 according to him he was working with the first party as part time sweeper. He worked as a part time sweeper from 1-4-1989 to 31-1-1994 without any break in service. Before termination of his service in the preceding year he had put in more than 240 days of continuous service. The first party terminated his service w.c.f. 1-2-1994. While terminating his service neither he was served with notice nor paid one month's pay and retrenchment compensation as required under Sec. 25F of I.D. Act, 1947. Therefore, the workman claims that his service deemed to have continued and he is entitled to full back wages and continuity of service.

3. According to him there were orders from Head Office of the first party to regularize the services of casual Labourers including part time workers. In spite of that they did not regularize him in the service. They also violated the principle of natural justice. Therefore, the workman approached to the higher officer and requested for reinstatement/regularization. He did not entertain the request thus workman approached to ALC. The dispute could not be settled therefore, ALC send report to Labour Ministry and Labour Ministry has sent this Reference. The workman thus prays that the action of management in

terminating his services be declared as illegal and invalid and he be reinstated in service with full back wages and continuity of service.

4. The first party management resisted the claim vide its W.S. at Exh. 11. They denied that the second party workman was their part time employee. According to them he was daily rated part time casual Labourer/Sweeper engaged on hourly basis for cleaning area of office admeasuring only of 400 sq. ft. with a small toilet. He was called on duty as and when required for. He was paid for those days and for number of hours of his work. He used to work hardly for two hours in a day. He was not engaged as a part time sweeper, there is no post of regular sweeper available with the DOT. They further submitted that, he was not given work daily. They denied that he has worked continuously for more than 240 days. They also raised the point of delay, according to them he has raised this dispute after eleven years of the alleged termination. Therefore, reference suffered from inordinate delay and laches. According to them the second party is not entitled to reinstatement or any relief. Therefore, question of awarding back wages or continuity of service does not arise. Thus they pray that the reference be dismissed with cost.

5. In the light of rival pleadings of the parties my Ld. Predecessor has framed the following issues for my determination. I record my findings thereon for the reasons to follow :

ISSUES	FINDINGS
(1) Whether the Reference suffers from inordinate delay and laches and thus liable to be rejected on that ground ?	... Yes
(2) Does second party proves that he was employee of the first party and there were employee-employer relationship between them ?	... No
(3) If yes does he further prove that his Service was illegally terminated by the first party ?	... No
(4) Is he entitled to the reliefs sought for ?	... No
(5) What order ?	... The reference stands dismissed.

REASONS

Issue No. 1 :

6. In this respect the first party has raised the point of delay and laches in raising the industrial dispute. Fact is not disputed that the second party workman is not working with the first party since 1-2-1994. The Labour Ministry, Govt. of India, has sent this Reference vide its

letter dated 26-9-2005. From these facts on record it is clear that there is more than eleven years delay in raising the dispute. In this respect the Ld. Advocate for the second party workman submitted that there is no limitation or time limit fixed for raising the industrial dispute. He further submitted that the workman had sent several representations since the years 1997, 1998, 2001 etc. However, management did not take any cognizance and have not reinstated him, therefore, there is no delay in raising the dispute. In this respect the Ld. Advocate for the first party management submitted that the letter correspondence was in respect of recruitment and giving preference to the persons who had already worked as a casual or part-time worker. She further submitted that making a representation after a time gap of few years does not bring the dispute in limitation. The first party workman ought to have raised the dispute within a year or two after termination of his services or after sending his first representation. He did not opt to raise the industrial dispute within reasonable time, therefore, the Reference suffers from delay and laches. In support of her argument the Ld. Advocate for first party resorted to Apex Court ruling in *Nedungadi Bank Ltd. v/s. K. P. Madhavan Kutty* 2000 AIR (SC) 839 wherein on the point of delay and laches the Hon'ble Apex Court observed that :

"Law does not prescribe any time limit for the appropriate Govt. to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to review matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Govt. has exercised powers in this case after lapse of about seven years of order dismissing the Respondent from service. At the time Reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of Reference under Sec. 10 of the Act."

7. In the case at hand the Govt. has send this Reference after time gap of more than eleven years. Therefore, in the light of ratio laid down in the above ruling such a dispute deserves to be dismissed on the ground of inordinate delay and laches in raising the industrial dispute. Accordingly, I decide this Issue No. 1 in the affirmative.

Issue No. 2 :

8. On this point the Ld. Advocate for the party No. 2 submitted that the fact is not disputed that the party No. 2 workman was part-time sweeper working with the first party. He was very well employee of first party, therefore, first party ought to have followed the due procedure in terminating the services of the party No. 2 workman. As against this the Ld. Advocate for the first party submitted

that the casual or contractual worker cannot be said employee of a company. She further submitted that such a casual or contractual worker not recruited after following the procedure therefor, cannot be regularized in service of the company. She pointed out the cross-examination of the second party workman at Ex. 16 wherein the workman has stated that no appointment letter was issued to him by the first party. There is also no transfer order transferring him from Reay Road to Thane. He further says that no casual labourer card was issued to him. He admitted that there was no pay slip issued to him. In respect of muster roll he says that he has signed muster roll of one month, he does not remember the month in which he has signed the muster roll. He admitted that he was getting Rs. 5 per day. It supports the version of the first party that the second party workman was a casual worker, working on hourly basis. Neither he was appointed as a part-time worker nor his name was on the muster roll. In the circumstances it cannot be said that he was employee of the first party.

9. In this respect Ld. Advocate for the first party management resorted to Apex Court ruling in Secretary, State of Karnataka & ors. v/s. Umadevi & ors. (2006) 4 SCC 1 wherein the Hon'ble Court held that casual labour/temporary employee do not have any right to regular or permanent in public employment. Such a temporary, contractual, casual, ad-hoc or daily wage public employment cannot be absorbed or regularized as permanent employee. In this case the Hon'ble Court further observed that :

"Issuance of such directions amount to creating another mode of public appointment, which is not permissible."

10. In short, the casual or contract workers cannot seek for regularization as neither they are appointed by following recruitment rules nor withstand any test or examination prescribed therefor. In short, the second party herein is not employee of the first party management. Therefore, no notice, one month's pay or retrenchment compensation was necessary for termination of his services. He was a mere casual worker engaged on hourly or daily wages basis. In the circumstances, termination of his services cannot be called illegal or bad. Accordingly I decide these issue Nos. 2 and 3 in the negative. Consequently, I hold that the second party is not entitled to the reliefs of reinstatement, regularization. Therefore, question of awarding back-wages also does not arise. Accordingly, I decide this issue No. 4 also in the negative. Thus the Reference deserves to be dismissed. Hence, the order :

ORDER

The Reference stands dismissed.

Date : 5th April, 2011

K. B. KATAKE, Presiding Officer

नई दिल्ली, 15 जून, 2011

का. आ. 1849.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.टी.एन.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/31 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-40012/71/2004-आई.आर. (डीयू.)]
डी.एस.एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 15th June, 2011.

S.O. -1849.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/31 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No.-II, Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the management of MTNL and their workman, which was received by the Central Government on 15-6-2011.

[No. L-40012/71/2004-IR (DU)]
D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. Katake, Presiding Officer

Reference No. CGIT-2/31 of 2005

Employers in relation to the management of:

Mahanagar Telephone Nigam Ltd.

The Assistant General Manager (Admn.),
Mahanagar Telephone Nigam Ltd., Installation
3rd Floor, Currey Road Telephone Exchange, Currey
Road, Mumbai-400 012.

AND

Their Workman

Shri S. D. Umrani, 121/2343, Samta Nagar, Kandivli
(E), Mumbai-400 101

APPEARANCES:

For the Employer : Mr. V. S. Masurkar, Advocate

For the Workman : Mr. S. Z. Choudhary, Advocate

Mumbai, the 1st April, 2011

AWARD

The Government of India, Ministry of Labour and Employment by its Order No. L-40012/71/2004-IR (DU), dated 10-12-2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of MTNL, Mumbai by discharging Shri S. D. Umrani from employment for the period from 6-6-1994 to 11-10-2000 under the guise of ‘Put Off’ and not paying full back wages for the period from 6-6-1994 to 11-10-2000 and non-payment of wages also for the period from 15-6-1993 to 5-6-1994 is legal and justified ? If not, what relief Shri S. D. Umrani is entitled to ?”

2. After receipt of the reference, both the parties were served with notices. The second party workman in response to the notice filed his statement of claim at Ex.-7. According to him he joined the Bombay Telephones w.e.f. 1-3-1983 as a casual labour. He was regularized w.e.f. 31-5-1993 as Mazdoor and accordingly he submitted his joining report of 15-6-1993. However his attendance was neither marked alongwith casual labourers nor alongwith the regular employees though he was on duty till 5-6-1994. He was put off the duty w.e.f. 6-6-1994 on the ground that some CBI enquiry was pending against him. In due course a case was also filed against him by CBI. On 17-9-1999 the workman was honorably acquitted of all the charges. He immediately reported to his duty. However he was asked to come after expiry of appeal period. He was allowed to join duty since 12-10-2000. Presently he is working at Currey Raod Telephone Exchange.

3. The workman claims that the management has not paid any wages from 15-6-1993 to 5-6-1994 though he was on duty. Thereafter he was kept out of work under the guise of put off from 6-6-1994 to 11-10-2000 and no wages were paid to him. Therefore the workman has filed application to ALC. ALC conducted conciliation proceeding. However the attempt was futile, therefore he sent the report to Govt. of India, Ministry of Labour and Employment. The Ministry sent the reference to this Tribunal.

4. The first party management resisted the statement of claim vide their written statement at Ex-9. They denied all the allegations. They denied that inspite of joining duty the workman was not paid the wages for the period mentioned in the statement of claim. They denied that they are liable to pay an amount of Rs. 23,333 with interest. They also denied that the workman is entitled to get amount of Rs. 3,88,763 with interest thereon. They also

denied that they are liable to pay any compensation as has been claimed.

5. My Ld. Predecessor has framed issue at Ex-17. The second party worker has filed his affidavit at Ex-18 his cross-examination was also over. The matter was adjourned for the evidence of first party management. The Ld. advocate for the management has filed a purshis Ex-28 stating that the second party workman expired and his family is not known to anybody He attached the copy of death certificate along with his purshis Ex-28. From the death certificate it is revealed that the workman Deoappa Umrani expired on 14-9-2009 at Mumbai. Till 1-4-2011 no Ir of deceased appeared. Therefore, the reference deserves to be abetted. Thus I pass the following order :

ORDER

Reference stands abetted.

Date: 1-4-2011

K. B. KATAKE, Presiding Officer.

नई दिल्ली, 15 जून, 2011

का. आ. 1850.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय विद्यालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 5/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2011 को प्राप्त हुआ था।

[सं. एल-42011/17/2009-आई आर (डीयू)।
डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1850.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kendriya Vidyalaya and their workman, which was received by the Central Government on 15-6-2011.

[No. L-42011/17/2009-IR (DU)]
D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI.**

Wednesday, the 6th June, 2011

PRESENT:

A. N. Janardanan, Presiding Officer

Industrial Dispute No. 5/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Kendriya Vidyalaya School and their Workman]

BETWEEN

Smt. P. Thangam : 1st Party/Petitioner

Vs.

The Principal : 2nd Party/Respondent
Kendriya Vidyalaya School,
INS Kattobomman,
Vijayanarayanam-627 119

APPEARANCES:

For the 1st party/Petitioner : M/s. K. M. Ramesh,
Advocates

For the 2nd party/Management : Ex-parte

AWARD

The Central Government, Ministry of Labour vide its Order No. L-42011/17/2009-IR (DU) dated 22-12-2010 referred the following industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Kendriya Vidyalaya, Vijayanarayanam, in not considering the reinstatement with back wages to their workman Smt. P. Thangam, from 6-3-1996 is legal and justified ? What relief the workman is entitled to ?”

2. After the receipt of industrial dispute, this Tribunal has numbered it as ID 5/2011 and issued notices to both sides. The petitioner entered appearance through Advocate and filed Claim Statement. On behalf of the Respondent there was a proposal made from some lawyer to file Vakalat but thereafter in spite of 6 adjournments no Vakalat has been filed. Respondent also was continuously absent or not represented. Eventually he has been called absent and set ex-parte.

3. The ID was disposed ex-parte earlier as per Award dated 20-4-2011 in the absence of petitioner as well as the respondent. As per order dated 4-5-2011 on IA 54/2011 on behalf of petitioner the ex-parte award was set aside and ID was restored to file for enquiry.

4. The short recital of facts in the Claim Statement are as follows :

Petitioner appointed as Basic Servant at Kendriya Vidyalaya School, INS Kattubomman, Vijayanarayanam, Naguneri Taluk, Tirunelveli initially on a casual basis with salary of Rs. 25 per day worked continuously from 1-1-1995 to 28-7-1995. From 29-7-1995 to 5-12-1995 she had been employed on a monthly salary of Rs. 868. The school being situated in a prohibited area under the control of the Indian Navy pursuant to Headmaster's letter dated 29-7-1995 she was issued an entry pass by the INS Kattabomman, Naval Base from 5-8-1995 to 5-12-1996. Her salary was paid at Rs. 868 per month from 1-1-1995 to 28-7-1995. It was paid through a signed voucher. From 29-7-1996 to 4-12-1996 she was paid salary on monthly basis. She proceeded on Maternity Leave from 5-12-1996 and she had been paid maternity leave salary. She had continuously worked for 338 days, from 1-2-1995 to 28-7-1995 from 29-7-1995 to 4-12-1995. After Maternity Leave from 5-12-1995 for 3 months when she reported for duty on 6-3-1996 she was informed terminated from service rather alleging that after receiving sanction from Delhi she would be taken back. She was orally terminated without assigning any reason or notice which is illegal and not justified and which is not for any misconduct. Her repeated requests for reinstatement were in vain. She raised ID before Tamil Nadu State Labour Officer followed by a petition before the labour Court, Tirunelveli from which for informed lack of jurisdiction, the same was withdrawn and the ID was raised before the Central Labour Machinery wherefrom it has been referred as per High Court order dated 18-10-2010 in WP (MD) 8587 of 2009. There is violation of Section 25-F of the ID Act. Subsequent entrants into service have been regularized in service. There is violation of Section 25G of the ID Act. Denial of employment when under Maternity Leave is arbitrary, illegal, in victimization and unfair labour practice. She has not been gainfully employed after the termination. Hence the claim.

5. The respondent yet remained absent and set ex-parte. No counter statement is filed refuting the petitioner's claim.

6. On the petitioners side WW1 was examined. Exs. W1 to W6 marked.

7. Points for consideration are :

- (i) Whether the action in not considering the reinstatement with backwages to Smt. P. Thangam, workman from 6-3-1996 is legal and justified ?

- (ii) To what relief the concerned workman is entitled?

Points (i) and (ii) :

8. Respondent being not present or represented by any advocate duly engaged, though it had been initially represented that the Vakalat is proposed to be filed for it but having not filed on several adjournments of the case from time to time it was called absent and set ex-parte. The matter, thereafter, while stood posted for adducing evidence on behalf of the petitioner, he filed proof affidavit in lieu of chief examination and proved Exs. W1 to W6 in support of her contentions, which do not stand rebutted by any cross-examination. The claim of the petitioner as made in the reference thus stands substantiated. Therefore she is entitled to succeed and is entitled to relief. Hence it is held that the action of management in not considering her reinstatement with back wages from 6-3-1996 is not legal and justified. She is entitled to forthwith reinstatement with back wages, continuity of service and all attendants benefits.

9. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 6th June, 2011).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the I Party/Petitioner : Sri P. Thangam

For the II Party/Management : None

Documents Marked :

On the Petitioner's side :

Ex. No.	Date	Description
WW1	17-11-1995	Receipt for payment of salary for the period 29-7-1995 to 28-9-1995.
WW2	04-01-1996	Receipt for payment of salary for the period 20-10-1995 to 17-11-1995.
WW3	21-10-2005	Award passed by the Labour Court, Tirunelveli in I.D. No. 30/1999.
WW4	27-02-2009	Report on failure of conciliation issued by the Asstt. Labour Commissioner (C), Madurai.
WW5	18-5-2009	Order issued by the Ministry of Labour, Govt. of India.

WW6 18-10-2010 Order of the Madurai bench of the Madras High Court in W.P. (MD) No. 8587 of 2009.

On the management's side :

Ex. No. Date Description

NIL

नई दिल्ली, 15 जून, 2011

का. आ. 1851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नै के पंचाट (संदर्भ संख्या 11 से 16/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2011 को प्राप्त हुआ था।

[सं. एल-41012/150 से 155/2007-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 15th June, 2011

S.O. 1851.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11 to 16 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Southern Railway and their workman, which was received by the Central Government on 13-6-2011.

[No. L-41012/150 to 155/2007-IR (B-1)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Thursday, the 9th June, 2011

PRESENT:

A. N. Janardanan, Presiding Officer

Industrial Dispute Nos. 11 to 15 of 2008

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of General Manager, Southern Railway, Chief Commercial Manager/Catering, Southern Railway and Regional Director, Indian Railway Catering and Tourism Corporation Ltd. and their Workman]

Sl. No.	I.D. No.	Reference No. and Date	Name of the 1st Party	Name of the 2nd Party	Appearance for Workman	Appearance for Respondent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	11/2008	L-41012/155/2007-IR(B-I) dated 20-2-2008	Sri R. M. Anandan	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar
2.	12/2008	L-41012/154/2007-IR(B-I) dated 20-2-2008	Sri M. Kanakaraj (Deceased), Sri R. Muthu and Smt. Chellammal	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar
3.	13/2008	L-41012/153/2007-IR(B-I) dated 20-2-2008	Sri R. Muthu	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar
4.	14/2008	L-41012/152/2007-IR(B-I) dated 20-2-2008	Sri M. Raja	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar
5.	15/2008	L-41012/151/2007-IR(B-I) dated 20-2-2008	Sri M. Pakiaraj	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar
6.	16/2008	L-41012/150/2007-IR(B-I) dated 20-2-2008	Sri M. Chelladurai	(i) General Manager, Southern Railway, Chennai (ii) CCM/C, Southern Railway, Chennai (iii) R.D., IRCTC, Chennai	M/s.K. M. Ramesh	For 1st and 2nd Respondents—Sri P. Srinivasan For 3rd Respondent—M/s. V. G. Suresh Kumar

COMMON AWARD

The Central Government, Ministry of Labour vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication :

2. The schedule mentioned in the order of reference in the above IDs are as under :

ID.11/2008

“Whether termination and disengagement of the services of Sri R. M. Anandan by the Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

ID 12/2008

“Whether termination and disengagement of the services of Sri M. Kanakaraj by the Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai, is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

ID 13/2008

“Whether termination and disengagement of the services of Sri R. Muthu by the Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai, is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

ID 14/2008

“Whether termination and disengagement of the services of Sri M. Raja by the Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai, is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

ID 15/2008

“Whether termination and disengagement of the services of Sri M. Pakiaraj by the Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai, is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

ID 16/2008

“Whether termination and disengagement of the services of Sri M. Chelladurai by the Management,

Southern Railway and the Indian Railway Catering and Tourism Corporation Ltd., South Zone, Chennai, is legal, fair and justified ? If not, what relief the workman concerned is entitled to ?”

3. After the receipt of Industrial Disputes, this Tribunal has numbered it as 11/2008, 12, 13, 14, 15 & 16/2008 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their claim and counter statement respectively.

4. The averments common in the Claim Statements in all the IDs bereft of unnecessary details are as follows :

The petitioner joined as Helper in Catering Department in the services of the Southern Railway on 21-1-1992. He was working in Rayapuram Godown for loading and unloading of catering materials, utensils, groceries into the coaches. He had been working continuously for more than 240 days in each calendar year with a last drawn wages of Rs. 150 per day, but paid monthly. He had been issued platform entry permits, identity cards, service certificates, etc. which would show his continuous engagement in the loading and unloading which is a regular work. Wages were paid directly by the Railway. He was being treated only as casual. With the advent of the 3rd Respondent w.e.f. 15-11-2005 taking an year to hand over to the 3rd Respondent also he was engaged by the 3rd Respondent, wholly owned by the Indian Railway. While so, services of petitioner should also have been taken over by the 3rd Respondent. But some other workmen were being engaged. Petitioner is entitled to be engaged for the same work. On 1-1-2007 he was orally terminated by the Commercial Manager and Chief Catering Inspector without assigning reason or 1 month's notice or notice pay. No compensation was also paid. The act amounts to retrenchment under Section 25F of the ID Act. The termination is void ab initio. An ID was raised which having failed the reference is occasioned. It is a case of victimization and unfair labour practice. Even after advent of 3rd Respondent petitioner was engaged for doing the very same loading and unloading work. Hence the prayer for reinstatement with back wages and all other benefits.

5. In the amended Claim Statement in ID 12/2008 consequent on the death of petitioner M. Kanakaraj impleading 2nd and 3rd petitioners viz. R. Muthu and Smt. Challammal the further averments over and above the averments in the original Claim Statement are that since the deceased petitioner—Son of the supplemental petitioners were depended upon by them for their livelihood in the event of being found that non-employment of deceased petitioner is not justified, sufficient amount may be granted in relief as compensation to them.

6. The averments in the common counter statement in all the IDs briefly read as follows :

Petitioners have not produced any documents to prove their engagement as claimed. On day-to-day coolie basis men were engaged at Royapuram Godown as and when their services were required for loading and unloading work till 14-11-2005 when the catering services were handed over to IRCTC on 15-11-2005. There was no continuous work at Royapuram. Only on 2 or 3 days a week there was work but the same coolie never used to be engaged continuously. The petitioners were never engaged as Helper or Attendant. The termination and disengagement of their services is fair, legal and justifiable. There is no violation of Section 25F of the ID Act. There is no document to prove that they worked continuously for 240 days in a year. There was no fixed wages of Rs. 150 but they were paid coolie on performance basis only. The catering units were handed over to IRCTC Ltd. in a phased manner from 1-1-2004 onwards till 15-11-2005. For the alleged refusal to permit to work as usual from 1-1-2007 onwards Railway is not responsible. The claim is to be dismissed.

7. The averments, common in the counter statement of 3rd Respondent, in all the IDs are as follows :

For loading and unloading of catering materials coolies available near the Royapuram Railway Station Goods Shed were utilized and paid coolies engaging them only as and when required. Petitioners were utilized for such coolie work which is intermittent in nature and on need basis. With the handing over of the catering to IRCTC Ltd. there being no necessity of loading and unloading work the said coolies were not to be utilized. The catering activities were handed over to Licensed Contractors. In the wake of taking over by IRCTC all catering Group 'C' and 'D' staff were transferred on "as is where is basis" to IRCTC in a phased manner w.e.f. 1-1-2004 on deemed deputation. Thus, in all the total number of regular 1299 staff members were taken over under 4 phases spread over from 1-1-2004 to 31-1-2006 as scheduled in the Counter Statement and they have been absorbed by R3. There was no category of Helper at any time. No provision is stored after the Godown was taken over. The coolies were paid coolie charges based on head load only. R3 never engaged the workmen. There is no employer-employee relationship inter se. Section 25F of the ID Act is not attracted.

8. The joint trial of all the IDs was allowed as per order dated 9-7-2009 on IA 30(A)/2009.

9. The evidence consists of Ex. W1 to Ex. W63 and the testimony of WW1 on the petitioner's side and Ex. M1 to Ex. M3 and the testimony of MW1 and MW2 on the Respondent's side.

10. Points for consideration are :

- (i) Whether the termination and disengagement of the services of R. M. Anandan and other 5 named workmen by the Southern Railways and the IRCTC Ltd., South Zone, Chennai is legal, fair and justified ?
- (ii) To what relief the concerned workmen are entitled ?
- (iii) To what relief the dependants of deceased petitioner in ID 12/2008 are entitled ?

Points (i), (ii) and (iii) :

11. Heard both sides. Perused the pleadings, documents and written arguments on behalf of the Respondents. It was argued on behalf of the petitioners that the workmen completed 240 days each in each calendar year and there is violation of Section 25F of the ID Act. Disengagement amounts to retrenchment and the termination is void. The Railway having taken over the catering activity recently as is evident from Ex. W63 petitioners are entitled to reinstatement into service.

12. The contra arguments are that there is no continuous engagement of the same coolies throughout the year. There is no proof of that fact. Their coolies were paid on performance rata basis varying from day-to-day for the quantum of work done. The entry permits were issued to them to carry out their work for a specific period varying from time to time. Only one ID Card viz. Ex. W1 in Xerox Copy without seal or date of the issuing authority has been produced in the name of M. Chelladurai. In respect of other workmen no such testimony is forthcoming. Casual employees engaged on needs basis have not right to posts. The decision in Secretary, State of Karnataka and Others Vs. Uma Devi (3) and Others (2006-4-SCC-1) goes against the claim of the workmen.

13. The crux of the aspect is whether the petitioners have worked 240 days in a year so as to blossom in their favour the status of permanency as to beget the mandatory benefits of Section 25F of the ID Act. There is no cogent materials produced on the side of the petitioners to show that they have worked for or more than 240 days in any year. It is not disputed by the Respondents that the petitioners have worked as coolies for loading and unloading of catering materials at Royapuram Goods Shed Godown. There is no proof either to show that the petitioners have been working continuously for fixed daily

or monthly wages but paid monthly. The documents relied on by them are of little impact to throw light into those aspects. The case of the Respondents is that they were engaged for the work of loading and unloading which is not of permanent nature but were intermittent. Again it was not the petitioners who were engaged for the purpose as and when it was required to be done. The available coolies near Royapuram Godown were utilized for getting the work done whenever such works were to be carried out. The same petitioners were not engaged at all times for the discharge of the work. Permits or Identity Cards were issued to enable them to do the work at the premises, godown and in the train. Only a copy of the ID Card in the name of petitioner Chelladurai has been produced which does not contain the seal or date of the issuing authority. In respect of other petitioners no iota of any such document is forthcoming. The documents produced are not apt to prove the case of the petitioners that they worked continuously for 240 days in a year. The case of the petitioners on a wholesale basis is that they joined service under the 1st and 2nd Respondent on 21-1-1992. But admittedly no appointment order has been issued. The appointment is not on the basis of any recruitment procedure followed for the purpose. When according to the Respondents the petitioners have not been appointed but were engaged as and when is deemed necessary for loading and unloading and that it was not the same workmen who were engaged it is especially for the petitioners to prove their specific case of engagement by the Respondent and engaging themselves for the same kind of work from time to time continuously for a period not less than 240 days in a calendar year as claimed. In the absence of any material to that end it is not possible to hold that petitioners were engaged by the Respondents continuously and that the same petitioners were engaged by them for the specific item of work. As against this there is only oath of WW1 which is discernibly only apt to be a self-serving document in order to get blossomed a right in favour of the petitioners for permanent status with the entitlement of the benevolent provisions of the ID Act. Though the said oath is met by the Respondent by oath alone which is not reliable and is unconvincing on account of the reason of the deponents being not directly well-versed with the facts deposed to personally as admitted but relying on the records themselves and admittedly disowning sound knowledge to very many pertinent questions touching upon the dispute, still it is not to be totally rejected as unwholesome or unreliable. It is especially for the reason that it is for the petitioners to specifically prove their case should they succeed. There is nothing to show that the petitioners have been engaged by the Respondent other than as casuals and paying wages as head load workers. When a case is to be proved by the petitioners in a reliable and convincing manner in the absence of that duty they cannot succeed by pricking holes or imputing weakness in the defence version. The decision of the apex Court in State

Bank of India Vs. Sri N. Sundaramoney (1976-STPL-LI:-8279) quoted by the learned counsel for the petitioner in support of his contention is not applicable to the facts of this case wherever there is no appointment at all whereas in the cited decision the workman had been specifically appointed. Such is not the case here. Therefore, the dictum in "Para-9"—A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination... for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service have been terminated? Verbal apparel apart, the substance is decision. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualize abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is not longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days—automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferably from the proviso to Section 25F(1)(sic) [Section 25F(a)?]. True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essentially to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case *R. v. Secretary of State*, (1973) 2 All ER 103 was relied on, where Lord Denning, M. R. observed is not applicable to this case. The engagement made casually not proved to have been made under any specific appointment order or to have been proved to run continuously so as to get blossomed a permanent status in favour of the petitioner, when ended cannot be said to be retrenchment. As held in *Uma Devi's* case it is an instance of only a casual engagement ending casually with the cessation of the engagement not with appointment order, and not by the effluxion of time or any overt act of termination emanating from the employer. Hence, it is held that there is not termination and disengagement of the service of the petitioners to assail it as whether illegal, unfair and unjustified. Petitioners are not entitled to any relief.

14. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 9th June, 2011).

A. N. JANARDANAN, Presiding Officer.

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri R. M. Anandan

For the 1 and 2nd Party/ Management : MW1, Sri K. Manoj

For the 3rd Party/ Management : MW2, Sri T. P. Bhaskar

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description	Ex. No.	Date	Description
Ex. W1	—	Identity Card issued to M. Challadurai	Ex. W13	13-06-2000	Letter from Respondent authorizing the petitioner to take the material
Ex. W2	01-01-1992	Entry permit letter issued to R. M. Anandan and Others	Ex. W14	18-12-2000	Bill for purchase of provisions etc.
Ex. W3	03-03-1992	Entry permit letter issued to R. M. Anandan and Others	Ex. W15	21-12-2000	Receipt for loading and unloading
Ex. W4	14-06-1993	Entry permit letter issued to R. M. Anandan and Others	Ex. W16	22-12-2000	Receipt for loading and unloading
Ex. W5	24-06-1994	Entry permit letter issued to R. M. Anandan and Others (2 Nos.)	Ex. W17	02-01-2001	Receipt for loading and unloading
Ex. W6	01-02-1995	Entry permit letter issued to R. M. Anandan and Others	Ex. W18	02-01-2001	Receipt for loading and unloading
Ex. W7	13-09-1995	Entry permit letter issued to R. M. Anandan and Others	Ex. W19	03-01-2001	Receipt for loading and unloading
Ex. W8	14-02-1997	Letter from petitioners requesting for revision of wages	Ex. W20	08-01-2001	Receipt for loading and unloading
Ex. W9	03-03-1997	Letter from CIR/GD/Rly. To Dy. CCS/Catering/MAS regarding issue of identity cards	Ex. W21	08-01-2001	Receipt for loading and unloading
Ex. W10	21-04-1998	Letter from petitioners to Dy. CCS/Catering/MAS regarding issue of identity cards	Ex. W22	18-12-2002	Receipt for loading and unloading
Ex. W11	08-10-1998	Letter from respondent regarding issue of entry permit to petitioners	Ex. W23	18-12-2002	Receipt for loading and unloading
Ex. W12	21-02-2000	Letter from Respondent regarding issue of entry permit to petitioners	Ex. W24	18-12-2002	Receipt for loading and unloading
			Ex. W25	18-12-2002	Receipt for loading and unloading
			Ex. W26	18-12-2002	Receipt for loading and unloading
			Ex. W27	18-12-2002	Receipt for loading and unloading
			Ex. W28	18-12-2002	Receipt for loading and unloading
			Ex. W29	18-12-2002	Receipt for loading and unloading
			Ex. W30	18-12-2002	Receipt for loading and unloading
			Ex. W31	18-12-2002	Receipt for loading and unloading

Ex. No.	Date	Description	Ex. No.	Date	Description
Ex. W32	01-02-2003	Coolie charges paid to the petitioners	Ex. W54	02-09-2006	Material demand and-issue note
Ex. W33	19-02-2003	Imprest Account Ledger	Ex. W55	06-09-2006	Material demand and issue note
Ex. W34	01-07-2004	Note put up for payment of charges	Ex. W56	08-09-2006	Material demand and issue note
Ex. W35	26-02-2004	Imprest Account Ledger	Ex. W57	23-09-2006	Material demand and issue note
Ex. W36	21-10-2005	Conduct Certificate issued to R. M. Anandan	Ex. W58	27-09-2006	Inventory of Catering items in Catering Staff Rest Room
Ex. W37	28-12-2005	Cash Voucher	Ex. W59	28-09-2006	Letter issued to RPF regarding authorization to R. M. Anandan
Ex. W38	28-12-2005	Cash Voucher	Ex. W60	—	Authorization letter issued to R. M. Anandan
Ex. W39	28-12-2005	Cash Voucher	Ex. W61	04-04-2007	Letter from Chelladurai to Respondent with acknowledgement
Ex. W40	03-01-2006	Cash Voucher	Ex. W62	20-08-2006	Judgment in W.P. Nos. 14369 of 1999 and 8022 of 2000
Ex. W41	03-01-2006	Cash Voucher	Ex. W63	28-12-2010	New Catering Policy-2010. Restoration of catering posts transferred to IRCTC issued by the Executive/Director (N), Railway Board
Ex. W42	16-01-2006	Material demand and issue note	On the Management's side:		
Ex. W43	5/6-04-2006	Authorization letter issued to R. M. Anandan	Ex. No.	Date	Description
Ex. W44	03-06-2006	Material demand and issue note	Ex. M1	—	Copy of Counter Statement filed on behalf of the Respondents 1 and 2
Ex. W45	08-06-2006	Material demand and issue note	Ex. M2	16-10-2007	Letter from Dy. Chief Commercial Manager/PS to Dy. Chief Labour Commissioner (C)
Ex. W46	10-06-2006	Material demand and issue note	Ex. M3	21-07-2010	Commercial Circular No. 35/2010 under Reference No. 2009/TG-III/600/25 dated 21-07-2010 issued by Executive Director/T&C, Railway Board to the General Managers, All India Railways
Ex. W47	17-06-2006	Material demand and issue note			
Ex. W48	21-06-2006	Material demand and issue note			
Ex. W49	14-07-2006	Material demand and issue note			
Ex. W50	08-08-2006	Authorization letter issued to R. M. Anandan			
Ex. W51	09-08-2006	Material demand and issue note			
Ex. W52	18-08-2006	Material demand and issue note			
Ex. W53	20-08-2006	Material demand and issue note			

नई दिल्ली, 16 जून, 2011

का. आ. 1852.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 03/1987) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/269/1985-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1852.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/1987) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, received by the Central Government on 13-6-2011.

[No. L-12012/269/1985-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute 03 of 1987

Ref. No. L-12012/269/(1)/85-D-IIA

Dated the 30th December, 1986

Sri Ramesh Chandra Gupta,
Son of Sri Ram Chandra Gupta,
House No. 18, Naubasta Gopal Dhavan,
Hamirpur Road,
Kanpur.

AND

The Regional Manager,
Region III,
State Bank of India,
The Mall,
Kanpur.

AWARD

1. Central Government, MoL, New Delhi vide notification has referred the following dispute for adjudication to this tribunal :

2. "Whether the action of the management of State Bank of India in terminating the services of the

workmen mentioned in the Annexure (a copy of the annexure containing the names of the workmen are enclosed with this award) and not considering each of them for further employment under Section 25H of the I.D. Act is fair, just and legal ? If not to what relief the workmen concerned are entitled ?

3. Brief facts are Central Government MoL has sent the aforesaid reference for decision. In this case my learned predecessor Sri B. K. Srivastava, has delivered an award on 8-5-97, wherein he has decided the case of claimant Sri Mahesh Chandra Gupta, Baldeo Prasad, Ramesh Chandra Gupta and Durga Prasad Pandey. This reference was in relation to 14 workers but out of 14 workers only four workers have contested the case and it was accordingly decided by my learned predecessor. Thereafter being aggrieved one of the worker, Ramesh Chandra Gupta filed CMWP in the Hon'ble High Court which was decided on 19-4-2006, wherein the Hon'ble High Court observed and held :

"Having heard learned counsel for the parties and having perused the material on record, I am of the opinion that because the reference itself was made with regard to the provision of Section 25H. The first question that the labour court should have addressed whether there was a valid retrenchment and if so what was the relief that the workman would be entitled to under Section 25H of the Act, instead the labour court has misconstrued the provisions of Section 25H, and has written a finding that the concerned did not work for 240 days. This was not the issue at all.

In my opinion the award of the labour court is vitiated on the ground itself. I remand the matter back to the industrial labour court for a proper finding on the issue of retrenchment and consequently consider the claim of the petitioner/workman under Section 25H of Industrial Disputes Act, 1947. The writ petition is allowed."

4. In this case the facts relating to Sri Ramesh Chandra Gupta is that he was appointed as casual labour/temporary hand at Usmanpur Branch of the opposite party bank on 23-4-84, and his services were terminated on 27-7-84, without any reason or justification. During this period the applicant has worked for 89 days only and he was not paid for holidays.

5. It is also the case that he was not the junior most when retrenched and the junior hands were allowed to continue in the bank. Further fresh hands were appointed after termination of the applicant and no opportunity was given to the applicant for his reemployment by the opposite party bank. No appointment letter, no termination letter, no notice or notice pay and no compensation was given to the applicant by the bank. Thus the bank violated the mandatory provisions of Section 25G and 25H read with

Section 25J of the Industrial Disputes Act and the rules made there under as well as the rules of natural justice. Bank also violated the provisions of the modified Shastri Award Settlements including para 493, 495, 507, 519, 522 and 524 of Shastri Award. Thus the bank's action was arbitrary and mala fide. Therefore, he has prayed that the action of the bank be declared as illegal and unjustified and he should be reinstated with effect from 27-7-84 with all consequential benefits.

6. Opposite party has filed written statement. Opposite party has admitted that the claimant was a casual worker on daily wages for a total period of 53 days and temporary employee for a period of 36 days from 21-6-84 to 26-7-84 as such he was not the regular employee of the bank. It has also been alleged that they were appointed for a fixed period to meet the exigency of work. There had taken place settlement in the year 1988 and 1991 according to which the workers who had worked like the concerned workman were give opportunity for service but they were not found suitable. In this way provision of Section 25H of the Act have been complied with.

7. Opposite party has sought amendment in their written statement. In the amendment they have alleged that there was settlement between union and the bank from time to time since 1988. In Jan. 91 another settlement was also entered in between the parties to grant one chance to such eligible temporary employees of the bank who could not appear in the interview for the reasons beyond their control. Publication was made in Dainik Jagaran on 1-5-91. The claimant along with many others applied and appeared in the interview on 30-7-91, but the claimant was not found suitable in the interview. The following details have been given :

As per agree- ment dated :	Date of interview	No. of candidates selected	No. of candidate appointed
17-11-87 and 27-10-88	year 1989	424	266
As per agree- ment dated :			
9-1-91	year 1991	392	64 as Sweeper guard.

8. The bank sent him information vide letter dated 16-11-93 by ordinary post and on 17-11-95 by registered post that he was not found suitable. Those who were selected were issued appointment letter like Vishnu Pado Ghosh and Ram Dulati.

9. Therefore, they prayed that the claim be dismissed.

10. Worker has also filed rejoinder in the case but nothing new has been disclosed therein.

11. After remand of the case the tribunal gave opportunities to both the parties to adduce evidence. Both the parties adduced oral evidence after remand also. Documentary evidence had already been filed which are being considered.

12. Claimant filed affidavit in evidence and he was permitted to cross examine. Opposite adduced Sri Suresh Chandra Sharma branch manager of Usmanpur, Kanpur.

13. Heard and perused the record.

14. Short point in this case will be decided is whether the claimant is entitled to any benefit under Section 25H of the Act and whether there is a valid retrenchment.

15. First of all I would like to reproduce the provision of Section 25H of the Industrial Disputes Act, 1947.

16. Where any workmen are retrenched and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed given an opportunity to the retrenched workmen who are citizen of India to offer themselves for reemployment and such retrenched workmen who offer themselves for reemployment shall have preference over others.

17. Thereafter I would like to reproduce certain other rules framed under the Act relating to this section. The rules are 77 and 78 of I.D. (Central) Rules 1957. Rule 77 prescribes that the employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in conspicuous place in the premises of the industrial establishment at least 7 days before the actual date of retrenchment. Similarly there is a mandatory requirement of rule 78 to be followed by the employer which I will discuss.

18. Now I will reproduce the definition as given under Section 2(oo) of the Act. Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action but does not include.

(a) Like voluntary retirement

(b)

(bb)

19. In this case the workman is not simply a casual labour but he was a temporary employee of the bank as admitted by the bank in their written statement at the time of disengagement.

20. The only point to be determined is whether a fair opportunity has been granted by the employer to the

workman as is provided under statutory provision of section 25H and the rules made there under 77 and 78. A dispute was raised by the workman in the year 1985 and the reference was made on 30-12-86 by Mol, New Delhi. I am mentioning this point for the purpose that as per aversion of the opposite party there were different settlements and accordingly they conducted interview and selected the candidates appointed them and a waiting list was prepared. They have given that first interview was held in the year 1989. Now a responsibility is cast upon the management to show that they have informed the workman as is provided in rule 78 of ID (Central) Rules 1957. Rule 78 provide – at-least ten days before the date on which vacancies are to be filled the employer shall arrange for the display on a notice board on a conspicuous place in the premises industrial establishment details of those vacancies and shall also give intimation of those vacancy by registered post to every one of all the retrenched workmen eligible to be considered therefore to the address given by him at the time of retrenchment or at any time thereafter. Here there is no such plea or aversion of the management that they have prepared a list of workman those who have been retrenched as is contemplated in rule 77. Similarly there is no plea or aversion or evidence that they have informed the present workman regarding this vacancy by registered post or ordinary post, though legislation has provided by registered post. It is not a case of opposite party that he was not eligible because he was eligible only then the workman has applied in the interview in the year 1991 as claimed by the opposite party. Opposite party cannot take this plea also that they were not having the address of the claimant because opposite party was well aware of the pendency of this case also and the necessity of the workman for the employment. As per opposite party under the settlement of 87 and 88 they have selected not only 10 or 20 candidates but 424 candidates. Similarly as per agreement of the year 1991 they have selected not 100 or 200 but 392 candidates. It is a fact that the workman was working for a group D post i.e. like messenger. If they have given the opportunity to the workman in the year 1989 then definitely the workman would have been given preference as contemplated under the provisions of section 25H of the Act.

21. There is another plea of the opposite party that the claimant was given opportunity in the year 1991 but he was not found suitable and he was informed accordingly by ordinary post as well as registered post.

22. In this regard the authorized representative for the workman has drawn my attention towards the provisions of section 25H which requires that if any workman who has been retrenched offer themselves for reemployment the management shall give preference over other persons. In this way a right has accrued to the retrenched employee to have preference over other

persons. Here in this case he is simply a group "D" employee and the opposite party has also not shown in their written or evidence that what was the eligibility criteria, what was the suitability criteria and those who are found unfit in regard to retrenched workman what was the reasons.

23. In this way a heavy burden lies on the shoulder of the opposite party to prove these facts. They cannot say that they have not made fresh recruitments. Their settlement itself shows that they have made fresh recruitment in respect to retrenched worker.

24. Now the burden lies on the opposite party to show that they had been fair to give an opportunity as is contemplated and not only opportunity but preference also to this workman. But in my view they have failed to prove these facts.

25. I have examined the statement of MW-1. The witness present was not posted in Usmanpur Branch before 2009. When a question was put whether he is able to tell, how many workers were engaged before year 1991 temporary or casual without following the prescribed procedure. He showed his ignorance. He also admitted that whenever there was exigency the workers were engaged but that with the permission of controller. He also admitted that the workman was employed with the permission of the controller.

26. Now it is a question now if the worker was employed with the permission of controller how he could be terminated even without issuing any termination letter. The bank has also admitted that the worker was granted temporary status. In my view a temporary status is only granted when vacancies are in existence otherwise he could have been continued to remain on the post of casual labor.

27. When a question was put to him whether he was having any knowledge that when Sri Ramesh appeared for interview, and in that interview how many candidates were appeared and how many selected. But he expressed his ignorance. He also admitted that there is no record regarding this workman at the branch regarding his unsuitability found in the interview or sending intimation to the workman either before selection or after election.

28. Therefore, there is no force in this contention of the opposite party that the workman was informed about his result after interview that he was found unsuitable.

29. The claimant has averred in his affidavit that one Lalit Kumar was employed after his removal of his service. Though there is no denial by the opposite party in the evidence of MW.2, but it is a question that the name of Lalit Kumar has not been mentioned in the claim petition. though this fact is there that fresh hands have been employed.

30. I would like to say that as discussed aforesaid the opposite party has himself admitted that they had selected and appointed number of candidates like 424 in the first list and 392 in the second list so the employment of Lalit Kumar whether done or not does not carry any weight. As observed and find out above, the opposite party has violated the provisions of section 25H of the Act, so a right had accrued to the workman.

31. I have considered the documentary evidence filed by both the parties. Opposite party was also directed to produce all the relevant record but they failed to produce the summoned records. Their prayer that the record was not traceable could not be believed because the workman had raised his dispute since 1985 and it was expected from the opposite party to keep the record intact so the same could be produced in the tribunal or court, but they failed. Therefore, in this respect also a presumption can be drawn against the management that they have withheld the record.

32. Therefore considering all the facts and circumstances of the case in my view it has been found that in not considering the name of the workman Sri Ramesh Chandra Gupta for further employment under the provisions of Section 25H of the Act, was not fair just and legal. Therefore, this part of the reference is decided in favour of the claimant. Consequently the retrenchment is deemed to be invalid.

33. Therefore, the applicant is entitled for his reinstatement. Opposite party is directed to reinstate him in the service.

34. Considering the facts and circumstances of the case it will be just if the applicant is allowed to have 50% of the back wages.

RAM PARKASH, Presiding Officer
ANNEXURE

S.No.	Name of the Workmen	Branch where Employed	Date of Termination
1.	Shri Baidya Nath Tiwari, Messenger	Phulpur Branch, Allahabad.	3-2-84
2.	Shri Ajay Kumar Mishra, Messenger	Motilal Nehru Engineering College, Allahabad	24-3-83
3.	Shri Anil Dhawan, Messenger	Kahu Kothi Branch, Kanpur	20-6-83
4.	Shri Ravi Shankar, Messenger	A.G UP Extention Counter	23-8-85
5.	Shri Sunil Kumar Shukla, Messenger	Johnstonganj Branch Allahabad	25-4-84
6.	Shri Ram Dulare Tewari, Messenger	Johnstonganj Branch, Allahabad	17-9-84

S.No.	Name of the Workmen	Branch where Employed	Date of Termination
7.	Shri Chironji Lal Verma, Messenger	Johnstonganj Branch, Allahabad	1-5-83
8.	Shri Mahesh Chandra Gupta, Messenger	Johnstonganj Branch, Allahabad	17-8-80
9.	Shri Radhey Shyam Mishra, Messenger	Johnstonganj Branch, Allahabad	26-4-83
10.	Shri Baldeo Prasad, Messenger	Jari Branch, Allahabad	7-3-81
11.	Shri Ramesh Chandra Gupta, Peon	Usmanpur Branch, Kanpur	27-7-84
12.	Shri Kamla Kant Bajpai, Messenger	Kanpur	21-7-84
13.	Shri Rakesh Kumar Agnihotri, Messenger	Main Branch, Allahabad	20-9-81
14.	Shri Durga Prasad Pandey, Messenger	Main Branch, Allahabad	14-10-83

नई दिल्ली, 16 जून, 2011

का. आ. 1853.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 845/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-12013/120/1998-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 845/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 16-6-2011.

[No. L-12013/120/1998-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH

PRESENT:

SRI A. K. RASTOGI, Presiding Officer

Case No. I.D. 845/2005

Registered on 8-9-2005

Sh. Sanjay Sharma,
S/o Sh. G D. Sharma,
Resident of 74/2,
Near Sewak Sabha,
Charitable Hospital Trust,
Hissar, Sirsa

... Applicant

Versus

The Branch Manager,
UCO Bank,
Railway Road,
Hissar

... Respondent

APPEARANCES:

For the Workman : Sh. B. D. Sharma, Advocate

For the Management : Sh. N. K. Zakhmi, Advocate

AWARD

Passed on 23rd May, 2011

Central Government vide Order No. L-12013/120/98/IR(B-II) Dated 17/25/05/1999, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following Industrial Dispute for adjudication to this Tribunal:

"Whether the action of the Branch Manager, UCO Bank, Railway Road, Hissar in terminating service of Sh. Sanjay Sharma S/o Sh. Ghansham Dass Sharma w.e.f. 4-5-97 is just and legal? If not, what relief the workman is entitled to?"

The case of the claimant is that he had been employed by the respondent bank at its Branch Office, Hissar on 18-1-1994 as Water-carrier-cum-Peon. He worked with dedication and sincerity but on 4-5-1997 he was told that his services were no longer required. Workman had completed more than 240 days of service under the respondent but his services were terminated without any notice, notice pay or compensation. Job of water-carrier-cum-Peon still exists. He has also alleged in his Claim Statement that to deprive him of the benefits of 240 days service, his name was changed in the Pay Bills and Muster Roll and thus respondent adopted unfair labour practice. He is unemployed since his termination. He has prayed for his reinstatement with full back wages and continuity of service.

The respondent contested the claim. It was alleged that the claimant did not complete 240 days service with the respondent in 12 calendar months preceding the date with reference to his job contract. He was engaged on contract basis for fetching water for which he was paid at the rates settled between the parties. He was merely a part-time casual worker. He was never on the roll of respondent bank. It was also stated that the bank have miscellaneous works which could not be done by usual employee like light fittings, maintenance of electricity, typewriters, maintenance of canteen at some places, water fetching, disposal of old stationery etc. and for these works, the bank usually engages persons for a fixed period and for a particular work. Such persons are not the employees of the bank and their disengagement does not constitute retrenchment. The claimant was never appointed by the bank nor he ever worked under any direct or indirect authority. Respondent also denied that the claimant worked from 18-1-1994 to 3-5-1997. According to him the claimant had worked intermittently as a water carrier and had also done some labour work for which he had been paid. Respondent never indulged in any unfair labour practice. The claim of the claimant has no merits.

In replication to the written statement of the respondent the claimant stated specifically that he had worked continuously for more than 240 days during 12 calendar months preceding the date of termination and it was necessary for the management to comply with the provisions of Section 25F of the Act.

On the pleadings of the parties the following issues arise for consideration:

1. Whether the claimant was an employee of the respondent?
2. Whether the termination of services of claimant without complying the provisions of Section 25F of the Act is just and legal?
3. Whether the respondent is guilty of adopting unfair labour practice, if yes, its effect?
4. To what relief is the claimant entitled?

In support of his case the workman filed his affidavit while on behalf of management, the affidavit of S. S. Punia, Senior Manager of the bank, Hissar Branch was filed.

It is worth mentioning that the workman had moved an application for summoning certain records from the respondent but management denied the existence of documents as detailed in the application of the claimant and stated that since the claimant had been engaged on contract basis intermittently so, there is no question of preparation of Pay Bill and maintenance of the Cash Book and other records. The respondent however, admitted that payment had been made to the workman for the contractual job he performed and the vouchers in that regard may be

produced in the court. In view of the stand of the management/respondent the court on 28-11-2005 directed the management to produce the payment vouchers of the workman on the next date and the workman was given liberty to prove the existence of other documents detailed in his application.

However, subsequently the management/respondent brought the notice of the court that the record being bulky cannot be produced in the court and the workman may examine the record in the office of the respondents and identify the relevant part of the record and the management will provide photo copy of the said record for producing the same in the court. On 5-9-2006 the management filed statement showing the days on which the claimant had served the management with a copy to workman. This statement is paper Nos. 12 to 15/4 and is collectively marked as 'A'. This statement contains a note that it was verified from original record of vouchers in the presence of claimant and his counsel.

The workman filed objections to this statement to say that the bank did not show the entire period for which the applicant/workman worked, on the false ground that the inspection was concerned only to the claimant. According to the claimant he had worked for the entire period and the management prepared the Pay Bills in the name of other persons. He mentioned certain vouchers of different dates and stated that he had worked on these dates as he had brought some material for the bank and had received the payment thereof on that date but the bank intentionally did not mark his presence.

The order sheet dated 5-10-2006 indicates that the claimant wanted more documents to be summoned, whereupon claimant had been directed to move a proper application but the claimant did not move any application thereafter.

I have heard the learned counsel for the parties and perused the record. My findings on various issues are as follows:

Issue No. 1.

So far as the employment of the claimant with the bank is concerned, it was for the workman to prove that he was in the employment of the bank. Learned counsel for the workman argued that from the statement of attendance marked 'A' it is clear that the claimant was in the employment of the respondent from 18-1-1994 to 3-5-1997.

Argument of the learned counsel for the management is that the workman was a daily wager and not a workman. He had been engaged for a specific work and not as a full time employee. He himself has stated in his cross-examination that the post of Peon on which he had been engaged had not been advertised and he had not been given any appointment letter and his name had not been sponsored by Employment Exchange. He had been called by the Manager and given the job.

From the evidence of the parties it is clear that the claimant was not appointed by following the due procedure. But it cannot be denied that he was in the employment of the management. Even if he was a daily wager engaged on the basis of a contract, he was a workman for the purpose of the Act. The definition of workman in the Act does not contain any exception with regard to daily wagers and contractual labour. It is, therefore, held that the claimant was an employee of the respondent. Issue no. 1 is decided in favour of the claimant.

Issue No. 2.

The statement marked 'A' filed by the management relates to the attendance of the workman in the bank. It shows that the workman worked in the bank from 18-1-1994 to 3-5-1997. It is the case of the workman that on 4-5-1997 he was told that his services were no longer required. His services were terminated on 4-5-1997. Admittedly, he was not given notice, notice pay or compensation. The workman in his replication has specifically alleged that he has completed more than 240 days service in 12 calendar months preceding the date of his termination. The management has disputed this fact. For deciding the number of working days during the relevant period the attendance statement of workman marked 'A' is relevant and for counting 240 days service the period from 5-5-1996 to 4-5-1997 is relevant. A perusal of the statement of this period shows that the workman worked only for 192 days during this period. The statement shows that during this period the workman alone worked and no other person signed under any fictitious name on the payment vouchers. The statement has the details of the dates, presence or absence of the workman, amount paid to him on each date and his signature on the voucher. The contention of the workman that in order to deprive him the benefit of 240 days his name was changed in the payments does not find support from the statement. In his objection to the statement marked 'A' he has taken the plea that the bank had not marked his presence on some dates though he had brought material and articles for the bank and had received the payment thereof on these dates. He has mentioned certain vouchers of different dates on which he had been shown absent but had received the payment of the material supplied to the bank. On tallying these details from the statement of attendance of workman marked 'A' for the relevant period from 5-5-1996 to 4-5-1997 the contention of the workman appears to be false. The dates on which he alleged to have brought the material for the bank are the dates on which he was present in the statement of attendance.

It is thus clear that the workman has failed to prove that he worked for more than 240 days in 12 calendar months preceding the date of his termination. Hence, it was not necessary for the respondent to comply with the provisions of Section 25F of the Act and the termination of the services of the claimant cannot be assailed on the

ground of non-compliance of provisions of Section 25F of the Act. The termination of his services without complying with the provisions of Section 25F of the Act is just and legal. Issue No. 2 is decided against the workman.

Issue No. 3.

In his claim statement the claimant has taken the plea that his name was changed in the Pay Bill and the Muster Roll to deprive him the benefit of more than 240 days' service and this amount to unfair labour practice. The learned counsel for the workman has placed reliance on a judgment of the Hon'ble Punjab and Haryana High Court in Mukesh Kumar Versus Presiding Officer, Industrial-cum-Labour Court-1, Faridabad, 2001 (2) RSJ 302 wherein it was held that where there is a question of unfair labour practice, the non-compliance of 240 days will not come in the way in getting the relief.

But the workman/claimant has not made out any case in the evidence to show that in the payment vouchers his name was changed.

The learned counsel for the workman further argued that the management is guilty of unfair labour practice as it is not maintaining the Muster Roll and the management has violated the provisions of Section 25D of the Act.

In this regard it will be stated that in his application dated 2-11-2004 he had prayed for summoning the Muster Roll also along with other record. But as it is mentioned in the order dated 28-11-2005 the management had denied the existence of the documents as detailed in the application as the workman had been engaged to fetch water on contract basis intermittently. Obviously, the management/respondent was not maintaining the Muster Roll but the question is whether management/respondent was bound to maintain the Muster Roll under Section 25D of the Act? Section 25D is contained in Chapter 5A of the Act and Section 25A of the Chapter 5A provides that Section 25C to 25D (both inclusive) are not applicable to industrial establishment in which less than 50 workmen on an average working day were employed in the preceding calendar month. It means that provisions of Section 25D are applicable to an industrial establishment having 50 or more workmen. There is nothing in the claim statement or in the evidence of the parties to show that in UCO Bank, Hissar Branch 50 or more than 50 workmen were employed. It is, therefore, clear that the workman has failed in making out a case of the applicability of the Section 25D of the Act. The respondent bank is not guilty of any unfair labour practice. Issue No. 3 is decided against the workman.

Issue No. 4.

From the above going discussion it is clear that the management was not under any obligation of complying the provisions of Sections 25F and 25D of the Act nor it is guilty of adopting any unfair labour practice. Hence, the action of the Management/Manager UCO Bank, Railway

Road, Hissar in terminating the service of the workman w.e.f. 4-5-1997 is just and legal. Workman is not entitled to any relief. Reference is answered, against the workman accordingly. Let two copies of award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 16 जून, 2011

क्र. आ. 1854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 39/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-35011/6/2008-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Cochin Port Trust and their workman, which was received by the Central Government on 16-6-2011.

[No. L-35011/6/2008-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri D. Sreevallabhan, B.Sc., LL. B., Presiding Officer
(Tuesday the 31st day of May, 2011/10th Jyaistha, 1933)

L.D. No. 39/2008

Union

: The General Secretary
Cochin Port Staff Association,
Willington Island,
Cochin, Kerala,
PIN-682 009.
By. Adv. Shri A. V. Xavier

Management

: The Secretary,
Cochin Port Trust,
Willington Island,
Cochin, Kerala,
PIN-682 009.
By M/s. Menon & Pai

This case coming up for final hearing on 30-05-2011 and this Tribunal-cum-Labour Court on 31-05-2011 passed the following :

AWARD

Dispute arose as to the denial of promotion to the workman Shri Ramesan Kottatchallil, now working as attender in the Cochin Port Trust, to the post of Shed Clerk in the reservation quota for Class IV employees and the same has led to this reference at the instance of the union under Section 10(1)(d) of the Industrial Disputes Act, 1947.

(2) The reference is :

"Whether the action of the management of Cochin Port Trust in not appointing Shri Ramesan Kottatchallil, Peon of Medical Department to the post of Shed Clerk against reservation quota for class IV employees is legal and justified? What relief the concerned workman is entitled to?"

(3) The concerned workman joined in service to the post of Peon in class IV category in the Cochin Port Trust on 16-11-1998. After declaration of probation on 15-11-2000 confirmation was given in that post w.e.f. 1-12-2000. His next promotion is to the post of Shed Clerk, the entry, post in Class III category. He was not given promotion to that post for the reason that he was not possessing the requisite educational qualification of graduation.

(4) According to the union the denial of promotion is illegal, unjust and discriminatory as he was having the prescribed educational qualification and was eligible for promotion. The educational qualification for promotion to the post of Shed Clerk was a pass in S.S.L.C. It was changed to graduation by the Port Trust Board by its resolution dated 13-12-1999. Retrospective effect was given to it from 26-09-1998. There is no legal sanctity for that resolution since it has not been approved by the Central Government as contemplated under Section 124 of the Major Port Trusts Act, 1963 and not published in the Official Gazette as provided under Section 132 of the said Act. It cannot be implemented or given effect to until the approval by the Central Government and publication in the Official Gazette. Hence even now the required qualification is S.S.L.C. and so the workman is eligible for promotion. Two others who were junior to him having only S.S.L.C. qualification were given promotion to the post of Shed Clerk even after passing the resolution.

(5) The management would contend that the Ministry of Shipping, Ports Wing vide letter dated 13-02-2004 invested the Board with the power to amend the recruitment rules in respect of Class II, III and IV posts from time to time. The requisite qualification is graduation for promotion to the post of Shed Clerk after the resolution of the Board dated 13-12-1999 and hence

the concerned workman is not eligible for promotion. Two employees from class IV category with S.S.L.C. qualification were given promotion as they were eligible for exemption as per that resolution. Hence the action of the management in not giving promotion to the concerned workman is legal and justifiable.

(6) Evidence was adduced from both sides and it consists of the depositions of WW1 & MW1 and Exts. W1 to W4 & M1 to M6.

(7) The points for determination are :

1. Whether the educational qualification for promotion to the reserved quota of Shed Clerks from Class IV employees is S.S.L.C. or graduation?
2. Whether the workman is eligible for promotion to the post of Shed Clerk and if so what relief he is entitled to?

(8) Point No. 1 : The workman is denied of giving promotion solely for the reason that he did not possess the requisite educational qualification. It is not in dispute that he was otherwise eligible for promotion. The dispute is only with regard to the required educational qualification. Whether it is graduation or S.S.L.C. is the question to be considered for the purpose of deciding the eligibility for promotion of the workman. The prescribed educational qualification for the post of Shed Clerk was Matriculation or equivalent examination as it stood prior to the resolution dated 13-12-1999. The Board in the meeting held on 13-12-1999 had resolved to approve the draft revised Recruitment Rules by which the minimum educational qualification for promotion to the post of Shed Clerk was changed as graduation and the same is evidenced by Ext. M6. In that resolution itself it is specified that it is subject to the approval of the Central Government under Section 124 of the Major Port Trusts Act wherever necessary. Nothing is stated therein with regard to retrospective effect from 26-09-1998. During the cross examination of MW 1 it was expressly stated by him that it has not got the approval of the Central Government so far. As per Section 28 of the said Act the Board has to make regulations for appointment and promotion. Section 28 reads thus :

"28. Power to make regulations—A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely :

- (a) the appointment, promotion, suspension, [reduction in rank, compulsory retirement.] removal and dismissal of its employees;
- (b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

- (c) the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 29;
- (d) the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals;
- (e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees”.

The regulation so made shall have effect only after getting the approval of the Central Government as envisaged under Section 124 of that Act. Section 124 reads as follows :

“124. Provisions with respect to regulations—(1)

No regulation made by the Board under this Act [other than a regulation made under sub-section (2) of section 17] shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) No such regulation (other than a regulation made under section 28), shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that gazette.

(3) Any regulation made under this Act other than a regulation made under section 28 may provide that a breach thereof shall be punishable with fine which may extend to (two thousand rupees) and where the breach is a continuing one, with further fine which may extend to (five hundred rupees) for every day after the first during which such breach continues.

(4) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”

(9) There is a prescribed procedure to make regulation for promotion as per that provision. It was not complied with to make change in the prescribed educational qualification for promotion. Without compliance of the procedure the implementation of the resolution of the Board making change in the prescribed qualification is not permissible. The implementation of the resolution can be had only after the approval by the Central Government and publication in the official gazette. Hence it cannot in anyway be said that the resolution has come into effect so far.

(10). Retrospectivity cannot be given without any express provision for the same. Except as to the two exemptions for which the cut off date is given as 26-09-1998 there is nothing else in Ext. M6 to show that retrospectivity was given from 26-9-1998. Ext. M4 is the revised rules and the same is produced to satisfy that graduation is prescribed as the minimum educational qualification for promotion to Shed Clerk for Class-IV employees from 26-09-1998. In it also there is no express provision as to retrospectivity. It does not bear any date. It is seen to have been issued on the basis of the Board Resolution dated 14-11-2003 about which no mention is made in the pleadings. The entire case rests on the resolution dated 13-12-1999. Ext. M4 is based on the resolution dated 14-11-2003. The date on which it has come into effect is not known. It is not possible to say that it will in anyway affect the eligibility for the promotion of the workman herein as he was fighting for promotion from the year 2000 and his juniors were already given promotion. MW1 has stated that Ext. M3 was in force before the issuance of Ext. M4. It is inconsistent with the case put forward by the management that the eligibility for promotion is on the basis of the Board Resolution dated 13-12-1999.

(11) Management relies on Ext. M5 letter dated 13-02-2004 addressed to the Chairman from the Ministry of Shipping, Ports Wing to satisfy that it has got power to amend the rules for promotion. It is regarding regulations as to the framing/amendment of recruitments seniority and promotion. It only says that for giving more functional power to the Major Ports action is to be taken for amending the RSP regulations in the Clause relating to the manner of recruitment and that the manner of appointment shall be as laid by the Board from time to time in respect of Class II, III and IV posts. It shall not invest the Board with the power to make regulations without compliance with the statutory procedure provided under the said Act. Ext. M5 will not in anyway help the management to satisfy that the management has got the power to make regulation in respect of matters specified under Section 28 of the Act without having due compliance with the procedural requirements contained in Section 124 of the Act. There is no case that any regulation was made to make change in the qualification for promotion in

accordance with the procedure provided under the Act. Hence it can very well be held that the prescribed qualification still continues to be S.S.L.C.

(12) **Point No. 2 :** The workman after joining service on 16-11-1998 as Peon was confirmed in that post w.e.f. 01-12-2000 vide order dated 26-12-2000, copy of which is Ext. M1. He was promoted as Attender. He is serial No. 2 in the seniority list marked as Ext. M2 and the first one in that list to be considered for promotion to the post of Shed Clerk. It is undisputed that those who joined after him were given promotion. Two were given promotion by resorting to the exemption clauses in the revised rules of promotion to the post of Shed Clerk which has no legal sanctity.

(13). In view of the finding on point No. 1 that the prescribed qualification for promotion to the post of Shed Clerk is S.S.L.C. The workman is having the prescribed qualification. He is eligible for promotion to the post of Shed Clerk. The action of the management in not appointing him to the post of Shed Clerk against reservation quota for Class IV employees is not legal and justified. The workman is entitled to be promoted as Shed Clerk in the vacancy in which his next junior was promoted. He is to be promoted in the post of Shed Clerk giving him that seniority within one month of the publication of this award.

Fixation of pay in the new post will be with effect from the date of taking charge in that post.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of May, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix

Witness for the Union

WW1 - Damodaran, present General Secretary of the Union.

Witness for the Management

MW1 - B. Unnikrishnan, Assistant Secretary, Cochin Port Trust.

Exhibits for the Union

Ext. W1 - Copy of letter dated 19-06-2001 written by the workman to the Traffic Manager, Cochin Port Trust.

Ex. W2 - Copy of Circular No. B1/Shed Clerk/2003/T dated 25th April, 2003 issued by the Traffic Manager, Cochin Port Trust.

Ext. W3 - Copy of letter dated 30-04-2003 written by the workman to the Traffic Manager, Cochin Port Trust.

Ext. W4 - Letter No. B1/Shed Clerk/2007/T dated 02-08-2007 sent by the Traffic Manager, Cochin Port Trust to the workman.

Exhibits for the Management

Ext. M1 - Photocopy of the regularisation order No. A10/8041/2000/S dated 26-12-2000.

Ext. M2 - Photocopy of the seniority list of attender/daftry.

Ext. M3 - Photocopy of the Pre-revised Recruitment Rules.

Ext. M4 - Photocopy of the revised Recruitment Rules.

Ext. M5 - Photocopy of the Letter No. PR-12012/3/2004/PE-I dated 13th February, 2004 addressed by the Under Secretary to the Government.

Ext. M6 - Photocopy of the Resolution No. 135 (Agenda item No. C-7).

नई दिल्ली, 16 जून, 2011

का. आ. 1855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, मुंबई के पंचाट (संदर्भ संख्या सी जी आई टी-2/6 ऑफ 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/77/2008-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/6 of 2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 16-6-2011.

[No. L-12012/77/2008-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI (CAMP :
GOA)**

PRESENT:

K.B. Katake, Presiding Officer

Reference No. CGIT-2/6 of 2009

Employers in Relation to the Management of Bank of India

The Manager,
Bank of India, Porvorim Branch, Goa

AND

Their Workman
Mrs. Sapna Sable Naik
H. No. 37, Shanti Nagar,
Porvorim Bardez, Goa

APPEARANCES:

For the Employer : Mr. P.J. Kamat, Advocate

For the Workman : No appearance

Camp : Goa, dated the 22nd March, 2011

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/77/2008-IR (B-II), dated 04-02-2009 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of India, Porvorim Branch in terminating the employment of Mrs. Sapna Sable Naik, Sweeper w.e.f. 5-5-2008 is legal and justified? What relief the workman is entitled for?"

2. After receipt of the reference, notices were served on both the parties. Workman filed statement of claim at Ex-12 making out her case. Management replied the statement of claim vide their written statement at Ex-13. Thereafter workman filed rejoinder at Ex-14 reiterating the claim made in the statement of claim. Issues were framed at Ex-17. Matter was fixed for filing of documents and list of witnesses. However second party though duly served, did not remain present nor filed documents and list of witnesses. Therefore, this reference cannot be decided on merits and the same deserves to be rejected. Thus I pass the following order:

ORDER

Reference stands rejected for want of prosecution.

Date: 22-03-2011

Camp: Goa

K.B. KATAKE, Presiding Officer

नई दिल्ली, 16 जून, 2011

का. आ. 1856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या सी जी आई टी-2/34 ऑफ 2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-31011/4/2008-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/34 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Mumbai Port Trust and their workman, which was received by the Central Government on 16-6-2011.

[No. L-31011/4/2008-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K.B. Katake, Presiding Officer

Reference No. CGIT-2/34 of 2008

Employers in Relation to the Management of Mumbai Port Trust

The Chairman,
Mumbai Port Trust,
Port Bhavan, S. V. Marg,
Ballard Estate, Mumbai-400001.

AND

Their Workmen
The Secretary,
Transport and Dock Workers' Union,
P.D'Mello Bhavan, P.D'Mello Road,
Carnac Bunder, Mumbai-400038

APPEARANCES:

For the Employer : Mr. M.B. Anchan, Advocate

For the Workmen : No appearance

Mumbai, dated the 14th March, 2011.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-31011/4/2008-IR (B-II), dated 5-6-2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Mumbai Port Trust in terminating the service of Shri Abubaker Jinnu is justified? If not, what relief the workman, Shri Abubaker Jinnu is entitled to?"

2. Both the parties were served with notices of reference. In response to the notice, the second party workman has filed his statement of claim at Ext-4. First party management resisted the claim by filing their written statement at Ext-5. Issues were framed at Ext-6 and matter was fixed for evidence of the second party union. Thereafter, the workman as well as representative of the union remained absent for number of dates. Thus the reference deserves to be dismissed for default. Hence, the order:

ORDER

Reference is dismissed for default.

Date: 14-03-2011 K.B. KATAKE, Presiding Officer

नई दिल्ली, 16 जून, 2011

का. आ. 1857.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या सी जी आई टी-2/64 ऑफ 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/51/2010-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/64 of 2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India, and their workman, which was received by the Central Government on 16-6-2011.

[No. L-12011/51/2010-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K.B. Katake, Presiding Officer

Reference No. CGIT-2/64 of 2010

Employers in Relation to the Management of Central Bank of India

The Regional Manager,
Central Bank of India, Regional Office,
Plot No. 383/384, Paradise Heights,
1st Floor, Station Road,
Thane-400 601

AND

Their Workmen

The General Secretary,
Central Bank Karmachari Sena,
Central Bank Building, 2nd Floor Head Office,
Mahatma Gandhi Road, Fort,
Mumbai-400 023

APPEARANCES:

For the Employer : No appearance

For the Workmen : No appearance

Mumbai, dated the 12th April, 2011

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/51/2010-IR (B-II), dated 25-11-2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India, Thane in imposing penalty as stoppage of two increments vide order dated 4-6-2009 upon Shri Sanjay D. Mokashi, Clerk is legal, just and proper? What relief the workman concerned is entitled to?"

2. Notices were issued to both the parties. However, second party though duly served, remained absent. Registered AD receipt to that effect is at Ext-5. The second party union did not appear and file the statement of claim. therefore, this reference cannot be decided on merits and the same deserves to be rejected. Thus I pass the following order:

ORDER

Reference stands rejected for want of prosecution.

Date: 12-04-2011

K.B. KATAKE, Presiding Officer

नई दिल्ली, 16 जून, 2011

क्र. आ. 1858.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-I, नई दिल्ली के पंचाट (संदर्भ संख्या 16/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-12011/278/2003-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1858.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. I, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 16-6-2011.

[No. L-12011/278/2003-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, KARKARDOOMA COURT
COMPLEX, DELHI**

ID No. 16/2004

The General Secretary,
Punjab National Bank Employees' Union,
4824/24, Ansari Road,
Darya Ganj,
New Delhi-110002

... Workman

Versus

The Sr. Regional Manager,
Punjab National Bank,
Regional Office,
North Delhi Region,
Rajendra Bhawan,
New Delhi

... Management

AWARD

Late arrival of Smt. Santosh Kaushik, a clerk working at G T. Road, Azadpur branch of Punjab National Bank (hereinafter referred to as the bank), for her duties on 20-10-95, led Hall Incharge not to allow her to mark attendance. She reasoned with the Hall Incharge, who advised her to meet the Branch Manager. She went to the cabin of the Branch Manager and questioned him as to

how he advised Hall Incharge not to allow her to mark attendance. When told that being late she lost her right to mark attendance, she shouted at her officer. When she wanted to talk to the Regional Manager on phone, Branch Manager advised her to have a dialogue with the former from outside his cabin. She lost her temper, shouted at the Branch Manager and caught hold of his collar. Other employees, posted in the branch, rushed and made Smt. Kaushik to go out of the cabin of the Branch Manager. Smt. Kaushik was suspended, which action was followed by a charge sheet. When her reply was found not to be satisfactory, a domestic enquiry was constituted. She participated in the enquiry. When Enquiry Officer submitted his report, the Disciplinary Authority awarded punishment of lowering her down by two stages in scale of pay, vide his order dated 8-5-2001. Her appeal came to be dismissed vide order dated 27-10-2001. A dispute was raised before the Conciliation Officer. The bank resisted the claim so made. Conciliation proceedings resulted in a failure. Conciliation Officer submitted its failure report to the appropriate Government, which in turn referred the dispute to this Tribunal for adjudication, vide Order No. L-12011/278/2003-IR (B-II), New Delhi dated 18-3-2004, with following terms :

“Whether the action of the management of the Punjab National Bank, Regional Office, New Delhi, of awarding punishment of lowering down the scale of pay by two stages to the workman Smt. Santosh Kaushik is fair, just and legal? If not, what relief the workman is entitled to?”

2. Claim statement was filed by Smt. Santosh Kaushik pleading therein that she joined services with the bank in 1981. During relevant period, she was working as clerk/typist in G.T. Road, Azadpur branch of the bank. Her service conditions are governed by various awards/bipartite settlements. She was being harassed by the Branch Manager, G T. Road, Azadpur branch of the bank first by over-burdening with work and thereafter making her to sit late in the evening, since she was not willing to meet his sexual expectations. She was further harassed, when a charge sheet was issued on 2-11-95. It was alleged that she had shown disobedience and manhandled the Branch Manager. She filed a reply to that charge sheet on 28-12-95. She presents that number of letters were issued to her prior to issuance of that charge sheet and her wages for 7 days were deducted maliciously.

3. She projects that with ulterior motive the Branch Manager assigned work of dispatch and wanted her to take cash for purchase of postal stamps, which was duty of a cash peon. Despite her repeated requests, the Branch Manager kept her in dark pertaining to instructions in respect of dispatch work. He refused to acknowledge her letter/representation dated 28-8-95. She made a request to the authorities to enquire into unfair treatment meted out

to her and wrongful activities of the Branch Manager, which request was intentionally ignored. On 23-9-95 General Secretary, Punjab National Bank Employees Union (hereinafter referred to as the union) wrote a letter to the Regional Manager pointing out atrocities perpetrated, besides illegal deduction of her wages. On 24-10-95 she made a detailed complaint to the Zonal Manager regarding misbehaviour and an assault by the Branch Manager with intent to outrage her modesty. The Branch Manager wanted to punish her since she was not willing to meet his sexual expectations, hence suspended her vide order dated 21-10-95. Charge sheet dated 2-11-95 was result of malafide and biased attitude of the Branch Manager, who used to claim that he could get her dismissed from service of the bank.

4. Shri Kulbhushan Sharma, Branch Manager, succeeded in subjecting her to disciplinary action and punishment. Enquiry conducted was bad, illegal, invalid and against principles of natural justice. No reasonable opportunity to defend was given by the Enquiry Officer. The Enquiry Officer was nurturing bias qua her. On 28-9-95 General Secretary of the union wrote to the Zonal Manager against the Enquiry Officer, besides issuance of an open circular dated 11-11-95 describing his high-handedness. During course of enquiry proceedings, she as well as her defence representative wrote to the Disciplinary Authority pointing out misbehaviour and bias of the Enquiry Officer. Findings recorded by the Enquiry Officer, is not based on evidence. There are various contradictions and inconsistencies in statements of the witnesses. Even then the Enquiry Officer recorded findings against her.

5. Branch Manager over-stayed in that branch against normal tenure of posting which fact shows that he was facilitated to enjoy dominating position over staff working under him. When she filed a criminal case against the Branch Manager, legal aid was sanctioned to the latter, which fact is suggestive that the bank conducted a superfluous enquiry against her. Witnesses were noted by the bank. The Enquiry Officer changed venue of the enquiry without information to her or her defence representative. The Enquiry Officer favoured the Presenting Officer in many ways. She wrote to the Disciplinary Authority seeking change of the Enquiry Officer but to no avail. The Enquiry Officer misbehaved with V. N. Pathak, a witness produced by her in defence.

6. A show cause notice dated 17-2-2001 was issued proposing punishment of removal from service with superannuation benefits. Subsequently punishment of lowering her down in scale of pay by two stages was awarded, which shows that show cause notice was issued in a mechanical manner. The enquiry lasted for a very long period and non-payment of subsistence allowance based on full pay was unwarranted. Non payment of travelling

allowance bills, for attending enquiry was illegal. The order of the Disciplinary Authority was confirmed by the Appellate Authority in mechanical manner, vide order dated 27-10-2001. He did not apply his mind to her submissions. Her criminal complaint stood test of cognizance when criminal court summoned Kulbhushan Sharma for offences punishable under Sections 354, 312 and 325 of the Penal Code. She presents that orders dated 8-5-2001, passed by the Disciplinary Authority, and 27-10-2001, passed by the Appellate Authority, may be set aside and her pay be restored to the original position.

7. Claim was demurred by the bank pleading that the dispute referred by the appropriate Government cannot be termed as industrial dispute, for want to valid espousal by a recognized union or considerable number of workmen. It is not a matter of dispute that Smt. Kaushik joined service of the bank as clerk on 26-8-81. It is also not a disputed fact that she was working in that capacity at G. T. Road, Azadpur branch of the bank w.e.f. 8-1-92. Her suspension on 21-10-95 and service of charge sheet on 2-11-95 are also not disputed. The bank pleads that Smt. Kaushik used to disobey orders/instructions issued by the Branch Manager. She deliberately did not complete her work within allotted time. On principles of "no work no pay", she forfeited her right to wages. When she intentionally did not perform her duties, the Branch Manager rightly deducted her wages. She misbehaved and manhandled the Branch Manager on 20-10-95, inside the bank premises. She was suspended on 21-10-95 for those acts. It has been projected that Smt. Kaushik was working in that branch from last more than three years but prior to September, 95 she never levelled any allegations against the Branch Manager. The bank presents that since criminal case pends adjudication before a court of law, it would not be proper to comment on allegations of sexual harassment. However, an enquiry was conducted against her, which commenced on 18-1-96. The enquiry concluded on 16-9-99. Ample opportunities were given to defend her. Enquiry was conducted in accordance with the principles of natural justice and full opportunity was given to present her defence. The Enquiry Officer held proceedings for over one year to enable her to present her defence. She had made wrong allegations against the Enquiry Officer. The Disciplinary Authority proposed punishment of compulsory retirement, considering serious nature of charges proved against her. In personal hearing Smt. Kaushik narrated her family circumstances, which led the Disciplinary Authority to take a lenient view and he reduced punishment from compulsory retirement to reduction in scale of pay by two stages. Her appeal was considered and rejected by the Appellate Authority. It has been claimed that there is no substance in the claim statement preferred, hence it may be dismissed.

8. On pleading of the parties, following issues were settled by my Ld. Predecessor :

- (1) Whether dispute has not been validly espoused as required under the provisions of the Industrial Disputes Act ? If yes its effect.
- (2) Whether the enquiry conducted by the management is proper and fair ?
- (3) Whether punishment imposed is disproportionate to alleged misconduct ?
- (4) As per terms of reference.

9. Issues relating to virus of the enquiry and non-espousal of the case by a recognized union of the bank were not treated as preliminary issues by my Ld. Predecessor. He opted to call the parties to lead evidence. Claimant had examined herself (WW1), Saranpal Singh (WW2), Ved Parkash (WW3) and Shri Ram Kumar (WW4) in support of her claim. Shri S. Chakravorty (MW1), Shri Ashwani Kumar Sharma (MW2) and Shri Kulbhushan Sharma (MW3) were examined on behalf of the bank.

10. Arguments were heard at the bar. Shri Manoj Arora, authorised representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorised representative, raised submissions on behalf of the bank. Written arguments were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

Issues No. 1

11. Onus to discharge the issue was on the claimant. In her testimony Smt. Santosh Kaushik had not spoken even a single word that after award of punishment she approached the union for redressal of her grievance. There is a vacuum of evidence on the fact that the union adapted her cause and presented it before the Conciliation Officer for redressal. Not even a word has been spoken on the count of espousal of the dispute by the union. Consequently it is evident that testimony of Smt. Kaushik is deficient on that count. Shri Saranpal Singh, who was working as the Zonal Secretary of the Union in 1995, entered the witness box to project that on 20-10-95 he went to Azad Pur branch of the bank to enquire about the incident. He does not speak that after award of punishment to Smt. Kaushik her dispute was espoused by the union. Therefore, testimony of Saranpal Singh is also of no avail to the claimant. Ved Parkash was brought in the witness box to speak about the incident which occurred on 20-10-95. He could not spell even a word on espousal of the cause of Smt. Kaushik by the union. Shri Ram Kanwar was serving as Security Guard at G. T. Road, Azadpur branch of the bank on 20-10-95. He also speaks about the facts in his deposition. Thus it is evident that no evidence worth name was brought over the record by Smt. Kaushik to project that her dispute was espoused by the union.

12. Whether dispute raised by Smt. Kaushik is an industrial dispute ? For an answer to this proposition it is expedient to know the definition of industrial dispute, as contained in clause (k) of Section 2 of the Industrial Disputes Act, 1947 (in short the Act), which is reproduced thus :

(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

13. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (1) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with—(i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

14. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act. Here in the case, the bank does not dispute that Smt. Kaushik is a workman within the meaning of clause (s) of Section 2 of the Act :

"15-A The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given

rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bona fide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workman as a class.

15. The Apex Court put gloss on the definition of "industrial dispute" in *Dimakuchi Tea Estate* [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of Section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non-employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non-employment, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non-employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

"We also agree with the expression 'any person' is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

16. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660] Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay*

Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen, in order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

17. The expression "industrial dispute" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957 (1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1), LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Drona Kuchi Tea Estate's case* [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose

employment, non-employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest”.

18. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an “industrial dispute”, is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an “industrial dispute” concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an “industrial dispute”. The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundaram* [1970 (1) LLJ 558].

19. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not “industrial dispute”.

20. It is not expedient that same union should remain in charge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an

“industrial dispute”, while the workman may be represented before the Tribunal for the purpose of Section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (II) LLJ 256].

21. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workmen to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of Section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of Section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

22. As projected above Smt. Kaushik claims that punishment of lowering scale of pay by two stages was awarded to her, vide order dated 8-5-2001. Therefore, it is evident that it is not a case of discharge, dismissal, retrenchment or termination of service of Smt. Kaushik, as provided by Section 2A of the Act. Therefore, her dispute does not answer the requirement of deemed industrial dispute, as enacted by the legislature in the aforesaid provisions. As detailed above, no evidence was brought over the record that her dispute was adapted by the union by way of a resolution or expression of a collective will to espouse it. It is not her case that substantial number of

workmen had sponsored her dispute. At the cost of repetition it is said that there is complete lack of evidence on this count. Evidence is deficient to the effect that after award of punishment, vide order dated 8-5-2001, union took up her cause and presented it before the Conciliation Officer for redressal of her grievance.

23. There is other facet of the coin. Reference order projects General Secretary of the union as one of the parties. Whether that fact would suggest that there was an espousal of her cause by the union? For an answer provisions of sub-section (2) of Section 10 of Act are to be noted, which detail the procedure for filing a claim for reference of an industrial dispute before the authorities empowered to adjudicate it. It speaks that parties to an industrial dispute may apply in prescribed manner, jointly or separately for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal and the appropriate Government if satisfied that the persons applying represent the majority of the each party, shall make the reference accordingly. Therefore, it is emerging over the record that a party has to apply in a prescribed manner to appropriate Government for making a reference of the dispute for adjudication. The Industrial Dispute (Central) Rules, 1957 (in short the Rules) prescribe procedure in that regard. Rule 3 speaks that an application under sub-section (2) of Section 10 of the Act for reference of an industrial dispute shall be made in form A and shall be delivered personally or forwarded by registered post to the Secretary to the Government of India in the Ministry of Labour and Employment, the Chief Labour Commissioner (Central), and the Assistant Labour Commissioner (Central) concerned. The application shall be accompanied by a statement setting forth—(a) the parties to the dispute; (b) the specific matters in dispute; (c) the total number of workmen employed in the undertaking affected; (d) an estimate of the number of workmen affected or likely to be affected by the dispute; and (e) the efforts made by the parties themselves to adjust the dispute.

24. Rule 4(b) provides that in case of a workman the application shall be signed by the President and Secretary of a trade union of the workmen, or by five representatives of the workmen, duly authorised in this behalf at a meeting of the workmen held for the purpose. Therefore it is evident that an application under sub-section (2) of Section 10 of the Act is to be signed by the President and Secretary of the Union. General Secretary of the Union has signed the application, since he is a party to the dispute. President of the Union is not a party. But no, evidence is there that the application in that behalf was not signed by the President of the union. It was for the bank to establish that the appropriate Government could not make the reference under consideration, for want of signature of the President of the union. A presumption lies in favour of the fact that official acts were regularly

performed, unless proved otherwise. For want of evidence from the side of the bank, a presumption lies that an application was moved by the President and the Secretary of the union, which fact may show that the union expressed its collective will to espouse the cause of the claimant. Considering all these facts, it is announced that cause of Smt. Kaushik was sponsored by the union and it acquired status of an industrial dispute. The issue is therefore answered in favour of the claimant and against the bank.

Issue No. 2

25. Smt. Santosh Kaushik unfolds that on 21-10-95 she was suspended by Shri Kulbhushan Sharma vide his order Ex. WW1/7. He was not competent to pass suspension order, since he was not his Disciplinary Authority. On 2-11-95 charge sheet, copy of which is Ex. WW1/8, was served upon her. She replied the charge sheet on 28-12-95, copy of which reply is Ex. WW1/9. Shri G. L. Dogra was appointed as Enquiry Officer vide letter dated 28-9-95, copy of which is Ex. WW1/10. Shri K. R. Nagpal, General Secretary of the Union, has already written against Shri Dogra to Zonal Manager on 28-9-95, wherein he detailed about his behaviour with customers and subordinate staff, copy of which letter is Ex. WW1/11. Shri Nagpal wrote an open circular on 11-11-95, copy of which is Ex. WW1/12. She wrote about 54 letters to the Disciplinary Authority against conduct of the Enquiry Officer, which letters are Ex. WW1/13, to Ex. WW1/66. During course of enquiry, the Enquiry Officer has not supplied her all documents on 23-3-98. She made a request for supply of documents, which application is Ex. WW1/67. Enquiry Officer had not supplied relevant documents and declined her request, claiming that the documents were "privileged documents". The Enquiry Officer was not an independent person, who never applied his mind and acted at the instance of the bank. She submitted her documents, which were not considered by the Enquiry Officer. She submitted medical certificate Ex. WW1/68 to project that she aborted a child, which was not considered by him. When Shri Chakarvorty was under cross-examination, the Enquiry Officer has not allowed her representative to put question to the witnesses. When Shri Kulbhushan Sharma was under cross-examination, he declined her question regarding her harassment. On 1-6-98, when she went to the branch to verify documents, she came to know that the document were tampered and torn. She raised an objection before the Enquiry Officer, which was not recorded by him. Enquiry Officer had not allowed her to examine Shri S. P. Singh in her defence. Shri Singh came in the branch to have a dialogue with the Branch Manager even prior to the incident. Though reference of Shri Singh was made by the Branch Manager in his testimony but she was not allowed to examine him. On 15-9-99 Presenting Officer wanted to file certain documents which request was initially declined by the Enquiry Officer. After a break of 15 minutes the

Enquiry Officer allowed the Presenting Officer to place those documents, over the record, which fact is recorded in proceedings dated 15-2-99, copy of which proceedings are Ex. WW1/17. The Enquiry Officer never supplied her with a copy of proceedings of respective date. During the course of her cross-examination she concedes that she was allowed to be represented by a defence representative of her choice. She also concedes that the Enquiry Officer had allowed her to cross-examine all witnesses examined by the Presenting Officer. She admits that the Enquiry Officer had allowed her to examine herself as well as her witnesses in her defence. She further admits that she had received copy of enquiry report, prior to receipt of show cause notice. She had made her comments against the enquiry report and was given personal hearing by the Disciplinary Authority.

26. Shri Ashwani Kumar Sharma, in his affidavit Ex. MM2/A deposed that Smt. Kaushik was placed under suspension on 21-10-95. She was charge-sheeted on 2-11-95 for her disorderly and indecent behaviour on the premises of the bank, wilful insubordination and disobedience of lawful and reasonable orders of her superior and for doing acts prejudicial to the interest of the bank. Her reply was found not to be satisfactory, hence departmental enquiry was constituted vide order dated 4-1-96. Smt. Kaushik attended enquiry proceedings along with her defence representative. Due opportunities were given to her to present her case. Enquiry Officer submitted his report to the Disciplinary Authority on 14-11-2000. The Disciplinary Authority sent copy of the enquiry report to Smt. Kaushik for her comments. She submitted her reply to the findings, vide letter dated 25-1-2001. The Disciplinary Authority served her a show cause notice proposing punishment of removal from service with superannuation benefits. Personal hearing was given to her after consideration of submissions made by Smt. Kaushik. The Disciplinary Authority took a lenient view and imposed punishment of reduction by two stages in scale of pay vide order dated 8-5-2001. Her appeal was rejected by the Appellate Authority, vide his order dated 27-10-2001. During the course of his cross-examination he disputes that copy of enquiry proceedings were not supplied to the claimant on each and every date. Her defence representative was General Secretary of the Union hence nobody could fleece him by not supplying him copy of enquiry proceedings on every date. He could not affirm or deny that letter Ext. MW2/W1 was tendered before the Enquiry Officer.

27. When facts testified by Smt. Kaushik and those unfolded by Shri Sharma were appreciated, it came to light that Smt. Kaushik alleged that the Enquiry Officer had not accorded full opportunities to her to present her defence. She agitates that proceedings dated 6-4-99, which are Ex. WW1/69, would highlight that she was not allowed to examine Shri S. P. Singh in her defence. In that regard

Shri Sharma could not dispel facts unfolded by Smt. Kaushik. Consequently it is evident that Smt. Kaushik claims that the Enquiry Officer had not allowed her to examine Shri S. P. Singh in her defence. Proceedings Ex. WW1/69 are perused to consider veracity of facts testified by Smt. Kaushik. As is evident out of documents Ex. WW1/69, Shri S. P. Singh was produced as a witness in defence by Smt. Kaushik. An objection was raised by the Presenting Officer that Shri Singh may not be allowed to testify facts in favour of the delinquent employee, since he was not present in G.T. Road, Azadpur branch of the bank on 20th of October, 1995. As per case projected, Smt. Kaushik gave a telephone call to Shri Singh from the branch on 20-10-95. Shri Kulbhushan Sharma disclosed those facts before the Enquiry Officer. When defence representative proceeded to examine Shri Singh on the count as to whether Smt. Kaushik made any complaint to him relating to her grievances, at that juncture an objection was raised by the Presenting Officer which objection was upheld. The Enquiry Officer ruled that the defence representative may ask specific questions to the witness relating to the incident dated 20-10-95, occurred at G.T. Road, Azadpur branch of the bank. It came over the record through the facts unfolded by the witness that neither he was present in Azadpur branch of the bank nor received a telephone call from Smt. Kaushik that day. The Enquiry Officer had not allowed defence to examine the witness since neither he was posted at G.T. Road branch nor any complaint was made to him by Smt. Kaushik relating to the incident. It was ruled that he cannot be examined on any other issue.

28. It is an admitted fact that Shri Singh was a Zonal Secretary of the Union, in whose zone G.T. Road, Azadpur branch falls. Shri Singh was the person to whom any complaint/representation could be made by the claimant. He was office bearer of the union, who could raise issues on behalf of the claimant before the authorities. He was the witness who could depose as to whether the claimant made any complaint against her branch manager, prior to 20-10-1995. He was in a position to unfold series of incidents which took place between the claimant and her superiors. It is an admitted fact that prior to 20-10-1995, wages of Smt. Kaushik were withheld for a period of 7 days, since she opted not to perform her duties. Therefore, Shri Sharma was the right person who would have unfolded facts which occurred prior to 20-10-1995 or thereafter, since Smt. Kaushik might have raised those issues before him, being office bearer of the union. Those facts ought have projected as to whether relations between Smt. Kaushik and Shri Kulbhushan Sharma were cordial or strained. He was in a position to highlight whether Smt. Kaushik levelled allegations against Shri Sharma relating to her sexual harassment, prior to 20-10-1995. He was also in a position to highlight as to whether a bias was nurtured by Shri Sharma against the claimant. All these facts ought have projected pros and cons of the matter. The Enquiry Officer

had not allowed the claimant to examine Shri Singh on those issues, believing that his conspicuous absence from the scene on 20-10-1995 was sufficient to shut his mouth. Various facts which would have enabled Smt. Kaushik to project her defence were withheld when Shri Singh was stopped from opening his mouth in the matter.

29. Another prong of attack has been made on the enquiry by Smt. Kaushik asserting that Shri K. R. Nagpal, General Secretary of the Union, has already written against Shri Dhingra to the Zonal Manager on 28-9-1995 wherein he had levelled allegations regarding his behaviour qua customers and subordinate staff, copy of which letter is Ex. WW1/11. An open circular was also issued by Shri Nagpal against the Enquiry Officer on 11-11-1995, copy of which circular is Ex. WW1/12. She wrote 54 letters against the conduct of the Enquiry Officer to the Disciplinary Authority which letters are Ex. WW1/13 to Ex. WW1/66. When Ex. WW1/13 was perused it became evident that Shri K. R. Nagpal, General Secretary of the Union, raised objections against the language used by the Enquiry Officer in letter dated 4-5-1996 addressed to the claimant. He had spit venom on the Enquiry Officer. It is evident that Shri Nagpal opted to malign the Enquiry Officer, being General Secretary of the Union. Ex. WW1/14 is a letter addressed to the Zonal Manager by the claimant wherein she levelled allegations against the Enquiry Officer. Contents of the letter speaks that circumstances detailed therein were gathered by Smt. Kaushik from the person who was sent by her to the Enquiry Officer with a request for an adjournment. Since the letter is based on hearsay facts, it nowhere proceeds to substantiate her allegations. Ex. WW1/15 is letter addressed by Shri Nagpal to the Enquiry Officer in his capacity of General Secretary of the Union. He uses his office to condemn proceedings of the Enquiry. Contents of this letter also does not espouse the cause of the claimant. In Ex. WW1/16 she levels allegations against the Enquiry Officer to the Zonal Manager of the bank. Ex. WW1/18 is a letter written by Shri Nagpal to Sr. Regional Manager, against the Enquiry Officer. Out of letter Ex. WW1/19, Ex. WW1/20, Ex. WW1/21, Ex. WW1/23, Ex. WW1/24, Ex. WW1/26, Ex. WW1/29, Ex. WW1/30, Ex. WW1/31, Ex. WW1/38, Ex. WW1/43, Ex. WW1/50, Ex. WW1/52, Ex. WW1/53, Ex. WW1/54, Ex. WW1/57 and Ex. WW1/58 it is emerging over the record that Shri K. R. Nagpal had waged war against the Enquiry Officer in the capacity of General Secretary of the Union. He made every efforts to bow down the Enquiry Officer by writing to his senior officers. It emerged that the enquiry proceedings were being discussed and interpreted by Shri Nagpal before Senior Officers, when the Enquiry officer was not in a position to open his mouth. All these letters show audacity of Shri Nagpal. These letters level allegations against the mode in which the enquiry was conducted or conduct of the Enquiry Officer during the enquiry against the claimant. Through these letters Shri K. R. Nagpal had tried to wash his dirty linen in public, while Enquiry Officer had no

platform to rebut and one sided view can not project true picture. In case these letters are appreciated favourably without verifying veracity, then a wrong signal would go and such office bearer may hamper work of an Enquiry Officer. Therefore, these letters are not given any weight while appreciating submissions advanced by Smt. Kaushik.

30. A claim has been made by Smt Kaushik that documents were not supplied to her, during the course of enquiry. She made a request to the Enquiry Officer on 23-3-1998, through an application Ex. WW1/67. Perusal of Ex. WW1/67 makes it clear that the Enquiry officer was requested to supply statements of Smt. Nirmal Chaudhary made on 20-10-1995. Shri S. Chakravorty and Shri Rajpal, made before Shri Dhawan Ghai relating to the incident, besides other documents. She made it clear that these documents were not supplied to her by the Enquiry Officer. Proceedings dated 23-3-1998 nowhere dispel her submissions. Thus it is emerging over the record that statement of Smt. Nirmal Chaudhary, S. Chakravorty and Shri Rajpal, made before Shri Dhawan Ghai were not supplied to her. These statements were relating to the incident, which was subject matter of the domestic action against Smt. Kaushik. When these statements were not supplied to her, the bank cannot claim that all required documents were supplied to Smt. Kaushik to prepare her defence.

31. She makes a claim that her documents were not considered by the Enquiry Officer. According to her she submitted medical certificate Ex. WW1/68 in her defence. Ex. WW1/68 goes to establish that she aborted a child this document was not taken into account, while recording a finding against her case of Smt. Santosh Kaushik is that Shri Kulbhushan Sharma pushed her on 20-10-1995, which push made her to fell down and she sustained injuries in her abdomen. Since she was in family way, she aborted the child. She filed a medical certificate issued by Dr. Ritu Chopra, which is Ex. WW1/68. This document ought to have been taken into consideration while examining her version. Enquiry Officer discarded this document and gave a feeling to the claimant that her version was not considered while recording a finding against her. When Enquiry Officer opts to brush aside a document without its consideration, it gives an impression that he acted in a partisan manner.

32. Since Enquiry Officer had not supplied documents which were needed by the claimant to prove her defence, opted not to consider certificate, submitted by her and disallowed her to examine Shri S.-P. Singh in her defence. It cannot be said that the Enquiry Officer had acted in fair and reasonable manner. Taking into account all these aspects I am constrained to conclude that the enquiry conducted by the bank was not fair and proper. Issue is, therefore, answered in favour of the claimant and against the bank.

Issue Nos. 3 and 4:

33. When enquiry conducted by the bank is held to be unjust, unreasonable and not fair, the findings, so recorded, has an effect of annulling the punishment too. It is an admitted case that the punishment awarded to the claimant was not of dismissal, discharge, retrenchment or otherwise termination of her services to invoke provisions of Section 11-A of the Act. When the Tribunal cannot exercise its jurisdiction under Section 11-A of the Act, a proposition emerges as to whether the Tribunal had to leave the matter at this juncture or to proceed further. For an answer legal position prior to enactment of Section 11-A of the Act is to be taken note of. Four standards were delineated by the Labour Appellate Tribunal in *Buckingham and Carnatic Company Limited* (1952 L.A.C. 490) to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in *Indian Iron and Steel Company Limited* [1958 (1) LLJ 260], without any acknowledgement to the precedent in *Buckingham and Carnatic* case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the Legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

34. Enunciation (1) and (2), referred above, are addressed to the bonafides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bonafide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workmen or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the

matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

35. In *Ramswarth Sinha* (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management of ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in *Motipur Sugar Factory Pvt. Ltd.* [1965 (2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In *Ritz Theatre* [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in *Bharat Sugar Mills Ltd.* [1961 (11) LLJ 644].

36. In *Delhi Cloth and General Mills Company* [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles:

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic

enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

- (3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when he holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.
- (4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal. If the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima

facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

- (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.
- (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.
- (7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

37. Keeping in view the proposition laid by the Apex Court in *Delhi Cloth and General Mills Company (supra)*, the Parliament inserted Section 11-A in the Act, which came into force w.e.f. 15th December, 1971. In the statement of objects and reasons for inserting Section 11-A, it was stated :

- (1) "In *Indian Iron and Steel Company Limited and Another Vs. Their Workmen* (AIR 1958 S.C. 130 at p. 138), the Supreme Court, while considering the Tribunal's power to interfere with the

management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgement for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

- (2) The International Labour Organisation, in its recommendation (No. 119) concerning 'Termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.
- (3) In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947

38. After insertion of Section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973 (1) LLJ 278] in the following propositions :

- "(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

- (2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such

the cabin of the Branch Manager, which fact was perceived by him through glass panes. He received a form for getting a demand draft issued from the Hall Incharge. When he was filling that form at the enquiry counter, he heard the Manager saying, "I smoke cigarette out of my money and not of your money." He completed his form and went to Mr. Ahluwalia, who was present in the cabin of the Manager at that time. He was standing at the gate of the cabin and saw Smt. Kaushik talking to someone on phone. Branch Manager snatched receiver from her hands and banged it on cradle. He perceived Branch Manager throwing smoke on face of Smt. Kaushik. He snatched her chunni and pushed her. She fell down. In the meantime two three female employees rushed there and lifted Smt. Kaushik. They enquired as to whether she sustained injuries. She put her hand on her abdomen and told that she was feeling pain there. He tried to help her, handed over purse to her and thereafter she left the cabin. He requested Mr. Ahluwalia to pin point draft charges, who did needful and initialled his form. Since entire staff had collected and uttered in a common voice that behaviour of the Manager was not proper, he left for his house as there was no possibility of getting a draft issued. During the course of his cross-examination, he concedes that he was not maintaining any account in that branch. He further concedes that he was residing in near vicinity of Kirti Nagar in those days. According to him, he went inside the branch at about 10 A.M. and found Smt. Kaushik sitting inside the cabin of the Branch Manager. He claims that he could not hear utterances of Smt. Kaushik, which she made on phone to the person on other end of the line.

46. Shri Ram Kanwar presents that on 20-10-1995 he was serving as Security Guard at G.T. Road, Azadpur branch of the bank. On that day, Smt. Kaushik reported for duties at 9.40 A.M. Cash was taken out of the chest at about 9.45 A.M. No untoward incident took place at that time when cash was taken out of the chest. At that time Smt. Kaushik was present inside the cabin of the Branch Manager. Smt. Kaushik was at a distance of 15-20 feet from entrance gate. He heard Smt. Kaushik saying, "Sharmaji what are you doing." At that juncture his attention was invited to that very place. He heard Smt. Kaushik uttering, "why you are putting smoke of cigarette on my face". Sharma ji retorted, "I am not smoking cigarette out of money of your father and smoking out of my own money". After about 5 minutes he again heard Smt. Kaushik saying, "Sharmaji what are you doing." He saw Shri Sharma snatching chunni of Smt. Kaushik and pushed her on one side. Smt. Kaushik fell down. When she was coming out of the cabin of the Branch Manager, he enquired as to what had happened. While weeping she told that she was feeling some problem in her abdomen. Thereafter she went out of the bank. During his cross-examination, he presents that employees should reach the bank at 9.30 A.M. Cash is taken out of the chest by 9.45 A.M. When Smt. Kaushik

fell down, one customer, who was standing near the gate, lifted her. At that time 20-25 officers were present inside the branch. None of them came for her help. He was Sharmaji smoking cigarette and puffing smoke at her face.

47. He concedes that he had applied for a housing loan, which application was granted. One instalment of loan was released in his favour and thereafter loan incharge went to his native village for enquiries. He reached there on a working day. He demanded a sum of Rs. 5,000 as bribe from him. He told that he would not pay any bribe. After 2 days he reached the branch and met him. He uttered in a loud voice that the loan officer would not leave even an employee, without accepting bribe. He admits that he had not made any complaint. He further admits that he had not paid loan instalments. He feigned ignorance whether Smt. Kaushik marked attendance in the register that day at about 9.40 or 9.45 A.M. According to him, at 10 A.M. attendance register reached cabin of the Branch Manager. He could not explain as to why Smt. Kaushik had not marked her attendance that day upto 10.15 A.M. He further admits that late-comers had to reach cabin of the Branch Manager to mark attendance. When he heard Smt. Kaushik questioning the Branch Manager for the first time, it was 10.15 A.M. at that time. He could not explain why Smt. Kaushik reached the cabin of the Branch Manager.

48. When facts unfolded by the witnesses, examined by rival parties are appreciated, it came to light that facts detailed by Shri S. Chakravorty remained unassailed. Though Shri S. Chakravorty was cross-examined on behalf of the claimant, yet no attempt was made to dispel facts presented by him. His testimony to the effect that Smt. Kaushik reached the branch on 20-10-95 at 10.10 A.M. remained unassailed. It also remained undisputed that attendance register was in the custody of the witness at that time, who had not allowed her to mark her attendance. No dispute was raised to the fact that he told Smt. Kaushik that all employees had reached their respective seats after an arrangement being made and she was not allowed to mark her attendance that day. No eye brows were raised to the facts deposed by the witness to the effect that Smt. Kaushik tried to mark her attendance but he frustrated her attempts in that regard. It was also not challenged that Smt. Kaushik tried to pressurize him but he frankly declined her efforts to mark her attendance. Witness made it clear that he advised her to see the Branch Manager in that regard. Therefore, out of facts unfolded by Shri S. Chakravorty it stood established that on 20-10-95 Shri Chakravorty had made arrangement in respect of work of all employees, who had reached their respective seats. When Sri Chakravorty had not allowed Smt. Kaushik to mark her attendance, she tried to pressurize him in that regard which efforts were made ineffective by the witness. He made her to approach the Branch Manager in that regard. Consequently, it is clear that Smt. Kaushik failed

to dislodge facts unfolded by the witness to the effect that on 20-10-95 she came late and was not allowed either to mark her attendance or to resume her duties. She was left with no option but to approach Branch Manager in that regard. Her testimony to this effect that on 20-10-95 she was not allowed to resume her duties and mark her attendance by the Branch Manager is contrary to the facts unfolded by Shri S. Chakarvorty. Facts unfolded by Smt. Kaushik are discarded by the version narrated by Shri S. Chakarvorty.

49. Facts unfolded by Shri Saranpal nowhere espouse her cause since he deposed in unequivocal words that Smt. Kaushik had not made any complaint to him relating to incident dated 20-10-95. He deposed in bold words that incident relating to 20-10-95 was not within his knowledge. He was not deputed by the senior officers of the union to take any action in respect of complaint of Smt. Santosh Kaushik, which was dated 20-10-95. Therefore, it is obvious that Sharanpal could not bring any fact on record which may espouse cause of Smt. Kaushik, relating to incident dated 20-10-95.

50. Ved Parkash entered the witness box to substantiate cause of Smt. Kaushik. When facts unfolded by him are closely perused it came to light that he is a procured witness. He projects that on that day he reached G. T. Road, Azadpur branch of the bank at 10 A.M. According to him he was residing near Kirti Nagar in those days and was not maintaining any account in that branch. Consequently, facts unfolded by Shri Ved Parkash are found to be contrary to ordinary human behaviour. An ordinary prudent man will visit a branch of the bank which is either near to his residence or office or place of destination, where he had to reach for work that day. G. T. Road, Azadpur branch of the bank was neither in near vicinity of his residence nor office premises nor to the destination where he had to go that day. As testified by Shri Ved Parkash, he was residing in near vicinity of Kirti Nagar and had to submit a draft to Atlas Cycle, Sonapat, that day. Therefore, it is not plausible that Ved Parkash would approach G. T. Road, Azadpur branch of the bank to obtain a bank draft. Furthermore he concedes that when a hue and cry was made in the branch, he left the branch without obtaining a draft. His testimony in that regard is against normal human behaviour. When he spent time in reaching the branch and filling form for obtaining a draft, it is expected of him to wait for sometime to obtain a draft. He claims that no such behaviour was depicted by him. Therefore, it is obvious that facts unfolded by Ved Parkash are farther from truth. It seems that for extraneous considerations Shri Ved Parkash entered the witness box to testify facts, which are convenient to Smt. Kaushik.

51. He places emphasis on the words that he heard Branch Manager saying, "I smoke out of my money and not of your money". He further presents that the Branch

Manager snatched chunni of Smt. Kaushik and pushed her. No such case has been projected by Smt. Kaushik that her chunni was snatched by the Branch Manager. According to Shri Ved Parkash 2-3 female employees rushed and lifted Smt. Kaushik. They enquired as to whether she was alright and then she told that she was feeling pain in her abdomen. Smt. Kaushik had not narrated the incident to the effect that her chunni was snatched and thereafter the Branch Manager had pushed her. According to Smt. Kaushik when she was making telephone call to the Regional Manager, Branch Manager snatched receiver from her hands and pushed her. She presents that she got up with the help of some persons and went outside. Therefore, it is obvious that Smt. Kaushik does not claim to have obtained assistance from her lady colleagues. It is evident that Ved Parkash had made out a different story than one projected by Smt. Kaushik. All these facts make it clear that version narrated by Ved Parkash is unbelievable, who tried to fabricate facts. Under these circumstances facts unfolded by Shri Ved Parkash are brushed aside from adjudication of the controversy.

52. Shri Ram Kanwar had also tried to fabricate facts with a view to soothe his feelings against the bank. He obtained a loan which he could not repay. Bank initiated an action of recovery against him. He felt enraged and entered the witness box to see that an adverse order is passed against the bank. With that motive Shri Ram Kanwar also tried to create a story for the claimant. He deposed that Smt. Kaushik reached the branch that day at 9.45 A.M. As unfolded above, Smt. Kaushik could not dispel testimony of Shri S. Chakarvorty who testified in bold words that Smt. Kaushik reached the branch that day at 10 A.M. Thus it is evident that facts unfolded by Shri Ram Kanwar that Smt. Kaushik reached the branch at 9.45 A.M. are false. Ram Kanwar projected that he heard Smt. Kaushik saying, "Sharmaji what are you doing". He also heard her saying, "why you are throwing smoke of cigarette on my face" to which Sharma retorted, "I am not smoking cigarette out of money of your father. I smoke out of my own money." After about 5 minutes he again heard Smt. Kaushik saying, "Sharmaji what are you doing". The conversation so narrated by this witness was not at all narrated by Smt. Santosh Kaushik. Thus it is evident that Shri Ram Kanwar had tried to fill in the gaps with a view to give meaning to his words. He also uttered that he saw Branch Manager snatching chunni of Smt. Kaushik and pushing her on one side. According to this witness Smt. Kaushik fell down, who was lifted by one customer standing near gate of the cabin. Facts presented by this witness do not get support either from the testimony of Shri Ved Parkash or Smt. Kaushik. It is obvious that Shri Ram Kanwar had entered the witness box with a view to see that the bank is put to some adverse situation. He made such an attempt only with a feeling of ill-will against the bank, when

recovery action was initiated in respect of loan availed by him. These reasons persuaded me to discard testimony of Shri Ram Kanwar from adjudication of facts of the present controversy.

53. Shri Kulbhushan Sharma details subsequent events, which took place when Smt. Kaushik reached his cabin, on being so advised by Shri Chakravorty. Shri Sharma unfolds that she reached his cabin at 10.15 A.M., where three customers were sitting there. She questioned him as to why she was not allowed to mark her attendance. Knowing well that she was late and had no right to mark her attendance, Smt. Kaushik dared to question her senior. She was told by Shri Sharma that since she was late she would not be allowed to mark her attendance. These words could not pacify her. She wanted to make a telephone call to the Regional Manager on which Shri Sharma advised her to give a call from outside his cabin. She did not desist and started talking on phone. While attempting to connect the line she uttered, "gundagardi machai hui hai. I will see how you people would not allow me to mark my attendance." She also shouted at telephone and uttered, "Aaj to mein kuchh karke he jaungee". When she was requested not to make such utterances in presence of customers, she got up all of a sudden, caught hold collar of Shri Sharma and tried to slap him. Staff members rushed and rescued Shri Sharma. Shri Sharma unfolds facts which make it clear that Smt. Kaushik questioned authority of Shri Sharma as a Branch Manager, when she was not allowed to mark her attendance. She shouted indecent words in presence of customers and exhibited feeling of insubordination. She caught hold of collar of Shri Sharma and manhandled him. All these facts make it clear that Smt. Kaushik lacked standards of decency and committed misconducts of insubordination and manhandling one's senior. Facts unfolded by Shri Sharma get substantiated through letter Ex. WW4/M1 wherein sequence of events were detailed by all employees of the branch for consideration of the Regional Manager. Consequently, I am constrained to conclude that the bank has been able to prove misconduct of Smt. Santosh Kaushik, in terms of para 19.5 (c), 19.5 (e) and 19.5 (j) of Bipartite Settlement dated 19-10-66.

54. Now it would be taken into account as to what punishment should be awarded to the claimant. As held above, she had not shown an orderly conduct. Her acts were subversive of discipline when she had shown insubordination to her Branch Manager, which was of such a degree as to be incompatible with continuance of relationship of employer and employee. She used intemperate language and manhandled to Branch Manager in presence of three customers. Considering all these facts punishment of lowering her down in the scale of pay by two stages would be just and proper. Therefore, the claimant is lowered down in the scale of pay by two stages, which order shall have effect from the date when

punishment was awarded to her by the bank, viz. 27-10-2001. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 28-2-2011 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 16 जून, 2011

का. आ. 1859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 6/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-6-2011 को प्राप्त हुआ था।

[सं. एल-12012/78/1987-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th June, 2011

S.O. 1859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/1988) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 16-6-2011.

[No. L-12012/78/1987-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, HJS, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
KANPUR**

Industrial Dispute No. 6 of 1988

BETWEEN:

S/Sri Rama Shanker, Lalita Prasad, Madan Chandra
and Hanumant Lal,
C/o Sri P. C. Bajpai,
990 'Y' Block,
Kidwai Nagar,
Kanpur.

AND

The Assistant General Manager,
Allahabad Bank,
Zonal Office,
115/58 Swaroop Nagar,
Kanpur.

AWARD

1. Central Government, MoL New Delhi vide Notification No. 12012/78/87-D.II(A) dated 29-1-88, has referred the following dispute for adjudication to this tribunal :

2. "Whether the action of the management of Allahabad Bank in terminating the services of S/Sri Rama Shanker, Lalta Prasad, Madan Chandra and Hanumant Lal with effect from 1-12-83, 16-12-80, 18-9-79 and 29-12-78 respectively is justified? If not to what relief the concerned workmen are entitled?"

3. Brief facts are —

4. Ministry of Labour, New Delhi, has sent the aforesaid reference in respect of Sri Rama Shanker, Lalta Prasad, Madan Chandra and Hanumant Lal which is as under :

5. Claim statement has been filed by Hanumant Lal, Lalta Prasad, Rama Shanker.

6. Except Sri Hanumant Lal none has come forward to pursue their case hence it is contended by the opposite party that their cases be decided against them for none prosecution of the case. I agree with the contention of the opposite party, hence the claim of Lalta Prasad, Rama Shanker, Madan Chandra is decided against them as they not pursued their cases. Now this case will be decided only with respect of Shri Hanumant Lal.

7. Sri Hanumant Lal has alleged in his claim statement that he was appointed by the opposite party bank on 3-4-78 as peon-cum-farrash at Hamirpur Branch of Allahabad Bank and worked over 257 days up to 28-12-78, when his services were terminated on 29-12-79 without any reason or justification. He was doing work of a regular and permanent nature of work but he was appointed as a temporary hand. It is also alleged that he was not the junior most workman at the time of his retrenchment and fresh hands were appointed after the termination of his services without giving him any opportunity of re-employment. He was not served with any termination letter, not issued and notice, or notice pay and no compensation was given to him. Thus the bank has violated the mandatory provisions of Sections 25F, 25B and 25H of the Act read with Section 25 J of the Act and rules including rules 77 and 78 and provisions of BPS like para 493 were also violated. Therefore, he has prayed that the order of termination be declared unjustified and also it be declared that he was in continuous service and he should be reinstated with consequential benefits.

8. Opposite party has filed a written statement denying the allegations made in the claim petition. It is stated that the claimant does not fall in the definition of workman as given under Section 2(s) of Industrial Disputes Act because the claimant has himself admitted that he

was not issued any appointment letter and his appointment was without following the regular selection process for appointment of regular employees. It is stated that the claimant used to be engaged as and when it was required according to exigency of work. In fact there was never any permanent vacancy in the branch where the claimant could have been engaged. Claim of the claimant that is alleged termination was in breach of Sections 25F, 25G and 25H is beyond the scope reference as such cannot be entertained. Further plea of breach of Section 25J of I.D. Act is vague in as much as it has not been disclosed as to who is junior person who was retained in service. The present case has been raised by the claimant at belated stage which has caused great delay. In any case agriculture field officer was not authorized and competent to issue of certificate about the period of alleged service which could have been done by the branch manager. Accordingly it has been prayed that the claim petition is liable to be rejected.

9. Both the parties have filed oral as well as documentary evidence. I will discuss the entire relevant document at the time of analyzing the evidence.

10. Claimant has adduced himself in evidence as WW1. Opposite party has adduced Sri Aditya Kumar Gupta as Senior Manager Allahabad Bank as MW 1.

11. Heard and perused the record.

12. The short question which will be decided in this case whether the workman has completed more than 240 days before date of his termination on 29-12-78, and if any right has accrued to him.

13. Main stress has been given by the claimant on the certificate which is paper No. 31/2. It shows that Sri Hanumant Lal has completed 257 days and oral evidence has been given by the claimant.

14. Opposite party has challenged the authenticity and genuineness and correctness of this certificate on several grounds. They have stated that the alleged certificate which has been purported to have been issued by Sri Ghanshyam Mishra the then Agriculture Field Officer of the concerned branch is forged and agriculture field officer was not authorized and competent to issue such certificate. Claimant has admitted in his cross-examination that at the time of issuance of this certificate Sri R. P. Dixit was the branch manager and when the certificate was signed by Sri Ghanshyam Mishra he was not the branch manager. It is a fact that the certificate does not bear any reference number or date. It is argued by the opposite party that the then branch Manager has passed away. It is argued that Sri Ghanshyam, Mishra was terminated from bank's services by way of punishment in the year 2003. This fact has been stated by MW.1 on oath and relevant papers Exs. M.1, M.2, M.3, and M.4 have been filed and proved by the opposite party. It is a fact that the dispute relates for the period 1978 and the claim has been filed in

the year 1988. It is also admitted in his cross-examination by the claimant that this certificate was issued to him in the year 1982. Now it is a question that why did he not file this certificate which is the basis of suit at the time of filing of the claim statement. It was filed by him in the year 2005 which is long long delay and definitely a prejudice has been caused to the opposite party because they could not defend and they could not prove such a certificate which has been issued by an unauthorized person, more over by a person who was terminated from the service of the bank. No explanation has been given by the claimant in not filing this certificate at the earliest. Moreover claimant has drawn my attention towards the papers which were filed before the High Court. This is paper No. 11/31 which is a photocopy. For a moment if cognizance is taken of this paper, in this paper the bank has stated that the worker has worked for only 46 days as a casual labour and the bank has also produced charged book and voucher for inspection at that time. In such circumstances a heavy burden lies upon the claimant to prove the authenticity and genuineness of the document. Claimant has not summoned the person Sri Ghanshyam Mishra who has issued the alleged certificate. It is also argued that the branch does not open on Sundays and public holidays where as in this certificate in the month of May, June, July, August, September and onwards Sundays are also included. Claimant has admitted that he used to get Rs. 10 per day as wages. It is a presumption that bank branches cannot be opened on Sundays and holidays unless specially authorized. No such evidence has been given by the claimant to prove such act. Opposite party stated that if Sundays and holidays are excluded then only 233 days comes out.

15. Opposite party has placed reliance on a decision 2010 (124) FLR 276 Punjab and Haryana High Court between Sri Ram Gopal and P.O. Industrial Tribunal-cum-Labour Court Faridabad. In this case the Hon'ble Court, held in continuous service, payment of salary or otherwise on Sunday does not make a difference. A daily rated worker cannot be said to be working even on holidays for the purpose of reckoning of 240 days. In this case it has been found that the claimant was a daily rated worker and no evidence has been given by him that he was being paid wages for Sunday's and holidays. Moreover, there is no such pleading to assert the same in the claim statement.

16. Therefore, I have thoroughly considered oral as well as documentary evidence on the point as to whether the claimant has completed 240 of continuous service preceding 12 calendar months from the date of his alleged termination.

17. For the facts and circumstances and evidence discussed above, the tribunal is of the confirm view that the alleged working certificate issued by the Agriculture Field Officer of the branch is not genuine and cannot be relied upon.

18. Claimant has also placed reliance upon 2005(105) FLR 383 Supreme Court between Bank of Baroda versus Gheemarbhai, Harji Bhai. In this case also the burden of proof that the claimant was in the employment of the opposite party-held primarily lies on the claimant who claims to be a workman. Here in this case any adverse presumption cannot be drawn against the management because they have already taken the plea that the claim has been filed after a long long delay and a prejudice has been caused to the opposite party and whatever the best evidence was in their possession the same could have been produced at the earliest opportunity but now when the record has been filed at a belated stage the bank is not in position to controvert the same. Therefore, the claimant cannot take any benefit from the decision 2005 (107) FLR 431 Allahabad High Court between Mahak Singh and Industrial Tribunal Meerut.

19. There is one more contention of the claimant that junior to him was retained at the time of his retrenchment and it is also the contention that fresh hands were appointed after the termination of the claimant without giving him any opportunity of re-employment.

20. It is contended by the opposite party that matter beyond the scope of reference cannot be decided by this tribunal, the reference has been made regarding termination of service. They have placed reliance upon a decision Rajendra Prasad Mishra versus Union of India and another, 2009 (121) FLR page 190 Allahabad High Court, wherein the Hon'ble High Court held that disputes with regard to the validity and legality of the order of termination was referred—question of reinstatement can arise when the order of termination found to be illegal – relief of re-employment under section 257H is totally distinct and different from incident relief of reinstatement in reference order-plea of violation of Section 25-H of the Act was irrelevant to make controversy – and this question could not be considered in isolation. It is also contended that there is no pleadings to the effect that who was junior to the claimant and who was given fresh appointment after the termination of the workman. No such evidence either oral or documentary is on record which could show that who was junior to the claimant and when he was appointed at Hamirpur branch. Therefore, this plea is also vague as held by the Hon'ble Court in 2009 (123) FLR 700 Allahabad High Court, between State Bank of Bikaner and Jaipur and Anurag Sharma wherein the Hon'ble High Court held that Section 25-H a bald allegation in absence of any specific allegation will not allow the industrial tribunal to hold that there has been a violation of the provisions of Section 25-H of the Act.

21. It has been contended by the claimant that Rama Shanker has been given the appointment by the opposite party but this fact has not been alleged by the claimant in his pleadings or in evidence in a specific way. Unless this

fact is pleaded specifically in the pleadings other party is not in a position to admit or deny that Act. At the stage of arguments the claimant cannot take the benefit of this fact and this fact required probing which could not be done in the absence of specific pleadings. Therefore, the claimant has also failed to show that any junior was retained in service while terminating his service. He has also failed to prove that new hand was appointed at the same branch after his termination. Whereas the opposite party has specifically stated that there is no such post at Hamirpur branch and no such appointment has been made.

22. Having concluded that the workman has palpably failed to prove the fact that he has completed 240 days continuous service in the bank preceding 12 months from the date of his retrenchment, he cannot be given any relief and therefore, the reference is liable to be decided against the claimant and in favour of the opposite party.

23. Accordingly the reference is decided against the claimant holding that he is not entitled for any relief.

Date: 31-5-2011

RAM PARKASH, Presiding Officer